

# Union Calendar No. 122

109TH CONGRESS  
1ST SESSION

# H. R. 1640

**[Report No. 109–215, Part I]**

To ensure jobs for our future with secure and reliable energy.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 14, 2005

Mr. BARTON of Texas (for himself, Mr. HALL, Mr. UPTON, Mr. STEARNS, Mrs. CUBIN, Mr. SHIMKUS, Mr. PICKERING, Mr. BLUNT, Mr. BUYER, Mr. RADANOVICH, Mr. PITTS, Mr. TERRY, and Mr. ROGERS of Michigan) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Science, Resources, Education and the Workforce, Transportation and Infrastructure, Financial Services, and Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

JULY 29, 2005

Additional sponsors: Mr. OTTER and Mr. BURGESS

JULY 29, 2005

Reported from the Committee on Energy and Commerce with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

JULY 29, 2005

Committees on Science, Resources, Education and the Workforce, Transportation and Infrastructure, Financial Services, and Agriculture discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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# A BILL

To ensure jobs for our future with secure and reliable energy.

1 *Be it enacted by the Senate and House of Representa-*  
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) *SHORT TITLE.*—*This Act may be cited as the “En-*  
 5 *ergy Policy Act of 2005”.*

6 (b) *TABLE OF CONTENTS.*—*The table of contents for*  
 7 *the bill is as follows:*

*Sec. 1. Short title; table of contents.*

## **TITLE I—ENERGY EFFICIENCY**

### *Subtitle A—Federal Programs*

*Sec. 101. Energy and water saving measures in congressional buildings.*

*Sec. 102. Energy management requirements.*

*Sec. 103. Energy use measurement and accountability.*

*Sec. 104. Procurement of energy efficient products.*

*Sec. 105. Energy Savings Performance Contracts.*

*Sec. 107. Voluntary commitments to reduce industrial energy intensity.*

*Sec. 108. Advanced Building Efficiency Testbed.*

*Sec. 109. Federal building performance standards.*

*Sec. 110. Daylight savings.*

### *Subtitle B—Energy Assistance and State Programs*

*Sec. 121. Low Income Home Energy Assistance Program.*

*Sec. 122. Weatherization assistance.*

*Sec. 123. State energy programs.*

*Sec. 124. Energy efficient appliance rebate programs.*

*Sec. 125. Energy efficient public buildings.*

*Sec. 126. Low income community energy efficiency pilot program.*

### *Subtitle C—Energy Efficient Products*

*Sec. 131. Energy Star Program.*

*Sec. 132. HVAC maintenance consumer education program.*

*Sec. 133. Energy conservation standards for additional products.*

*Sec. 134. Energy labeling.*

- Sec. 135. Preemption.*  
*Sec. 136. State consumer product energy efficiency standards.*

*Subtitle D—Public Housing*

- Sec. 145. Grants for energy-conserving improvements for assisted housing.*  
*Sec. 147. Energy-efficient appliances.*  
*Sec. 149. Energy strategy for HUD.*

*TITLE II—RENEWABLE ENERGY*

*Subtitle A—General Provisions*

- Sec. 201. Assessment of renewable energy resources.*  
*Sec. 202. Renewable energy production incentive.*  
*Sec. 203. Federal purchase requirement.*  
*Sec. 204. Insular areas energy security.*  
*Sec. 205. Use of photovoltaic energy in public buildings.*  
*Sec. 206. Grants to improve the commercial value of forest biomass for electric energy, useful heat, transportation fuels, petroleum-based product substitutes, and other commercial purposes.*  
*Sec. 207. Biobased products.*  
*Sec. 208. Renewable energy security.*

*Subtitle C—Hydroelectric*

*PART I—ALTERNATIVE CONDITIONS*

- Sec. 231. Alternative conditions and fishways.*

*PART II—ADDITIONAL HYDROPOWER*

- Sec. 241. Hydroelectric production incentives.*  
*Sec. 242. Hydroelectric efficiency improvement.*  
*Sec. 243. Small hydroelectric power projects.*  
*Sec. 244. Increased hydroelectric generation at existing Federal facilities.*  
*Sec. 245. Shift of project loads to off-peak periods.*

*TITLE III—OIL AND GAS*

*Subtitle A—Petroleum Reserve and Home Heating Oil*

- Sec. 301. Permanent authority to operate the Strategic Petroleum Reserve and other energy programs.*  
*Sec. 302. National Oilheat Research Alliance.*  
*Sec. 303. Site selection.*  
*Sec. 304. Suspension of Strategic Petroleum Reserve deliveries.*

*Subtitle B—Production Incentives*

- Sec. 320. Liquefaction or gasification natural gas terminals.*  
*Sec. 327. Hydraulic fracturing.*  
*Sec. 330. Appeals relating to pipeline construction or offshore mineral development projects.*  
*Sec. 333. Natural gas market transparency.*

*Subtitle C—Access to Federal Land*

- Sec. 344. Consultation regarding oil and gas leasing on public land.*

- Sec. 346. Compliance with executive order 13211; actions concerning regulations that significantly affect energy supply, distribution, or use.*
- Sec. 350. Energy facility rights-of-way and corridors on Federal land.*
- Sec. 355. Encouraging Great Lakes oil and gas drilling ban.*
- Sec. 358. Federal coalbed methane regulation.*

*Subtitle D—Refining Revitalization*

- Sec. 371. Short title.*
- Sec. 372. Findings.*
- Sec. 373. Purpose.*
- Sec. 374. Designation of Refinery Revitalization Zones.*
- Sec. 375. Memorandum of understanding.*
- Sec. 376. State environmental permitting assistance.*
- Sec. 377. Coordination and expeditious review of permitting process.*
- Sec. 378. Compliance with all environmental regulations required.*
- Sec. 379. Definitions.*

*TITLE IV—COAL*

*Subtitle A—Clean Coal Power Initiative*

- Sec. 401. Authorization of appropriations.*
- Sec. 402. Project criteria.*
- Sec. 403. Report.*
- Sec. 404. Clean Coal Centers of Excellence.*

*Subtitle B—Clean Power Projects*

- Sec. 411. Coal technology loan.*
- Sec. 412. Coal gasification.*
- Sec. 414. Petroleum coke gasification.*
- Sec. 416. Electron scrubbing demonstration.*

*Subtitle D—Coal and Related Programs*

- Sec. 441. Clean air coal program.*

*TITLE V—INDIAN ENERGY*

- Sec. 501. Short title.*
- Sec. 502. Office of Indian Energy Policy and Programs.*
- Sec. 503. Indian energy.*
- Sec. 504. Four Corners transmission line project.*
- Sec. 505. Energy efficiency in federally assisted housing.*
- Sec. 506. Consultation with Indian tribes.*

*TITLE VI—NUCLEAR MATTERS*

*Subtitle A—Price-Anderson Act Amendments*

- Sec. 601. Short title.*
- Sec. 602. Extension of indemnification authority.*
- Sec. 603. Maximum assessment.*
- Sec. 604. Department of Energy liability limit.*
- Sec. 605. Incidents outside the United States.*
- Sec. 606. Reports.*
- Sec. 607. Inflation adjustment.*

- Sec. 608. Treatment of modular reactors.*
- Sec. 609. Applicability.*
- Sec. 610. Prohibition on assumption by United States Government of liability for certain foreign incidents.*
- Sec. 611. Civil penalties.*
- Sec. 612. Financial accountability.*

*Subtitle B—General Nuclear Matters*

- Sec. 621. Licenses.*
- Sec. 622. NRC training program.*
- Sec. 623. Cost recovery from government agencies.*
- Sec. 624. Elimination of pension offset.*
- Sec. 625. Antitrust review.*
- Sec. 626. Decommissioning.*
- Sec. 627. Limitation on legal fee reimbursement.*
- Sec. 629. Report on feasibility of developing commercial nuclear energy generation facilities at existing Department of Energy sites.*
- Sec. 630. Uranium sales.*
- Sec. 631. Cooperative research and development and special demonstration projects for the uranium mining industry.*
- Sec. 632. Whistleblower protection.*
- Sec. 633. Medical isotope production.*
- Sec. 634. Fernald byproduct material.*
- Sec. 635. Safe disposal of greater-than-class c radioactive waste.*
- Sec. 636. Prohibition on nuclear exports to countries that sponsor terrorism.*
- Sec. 638. National uranium stockpile.*
- Sec. 639. Nuclear Regulatory Commission meetings.*
- Sec. 640. Employee benefits.*

*Subtitle C—Additional Hydrogen Production Provisions*

- Sec. 651. Hydrogen production programs.*
- Sec. 652. Definitions.*

*Subtitle D—Nuclear Security*

- Sec. 661. Nuclear facility threats.*
- Sec. 662. Fingerprinting for criminal history record checks.*
- Sec. 663. Use of firearms by security personnel of licensees and certificate holders of the Commission.*
- Sec. 664. Unauthorized introduction of dangerous weapons.*
- Sec. 665. Sabotage of nuclear facilities or fuel.*
- Sec. 666. Secure transfer of nuclear materials.*
- Sec. 667. Department of Homeland Security consultation.*
- Sec. 668. Authorization of appropriations.*

**TITLE VII—VEHICLES AND FUELS**

*Subtitle A—Existing Programs*

- Sec. 701. Use of alternative fuels by dual-fueled vehicles.*
- Sec. 704. Incremental cost allocation.*
- Sec. 705. Lease condensates.*
- Sec. 706. Review of Energy Policy Act of 1992 programs.*
- Sec. 707. Report concerning compliance with alternative fueled vehicle purchasing requirements.*

*Subtitle B—Hybrid Vehicles, Advanced Vehicles, and Fuel Cell Buses*

*PART 1—HYBRID VEHICLES*

- Sec. 711. Hybrid vehicles.*  
*Sec. 712. Hybrid retrofit and electric conversion program.*

*PART 2—ADVANCED VEHICLES*

- Sec. 721. Definitions.*  
*Sec. 722. Pilot program.*  
*Sec. 723. Reports to Congress.*  
*Sec. 724. Authorization of appropriations.*

*PART 3—FUEL CELL BUSES*

- Sec. 731. Fuel cell transit bus demonstration.*

*Subtitle C—Clean School Buses*

- Sec. 741. Definitions.*  
*Sec. 742. Program for replacement of certain school buses with clean school buses.*  
*Sec. 743. Diesel retrofit program.*  
*Sec. 744. Fuel cell school buses.*

*Subtitle D—Miscellaneous*

- Sec. 751. Railroad efficiency.*  
*Sec. 752. Mobile emission reductions trading and crediting.*  
*Sec. 753. Aviation fuel conservation and emissions.*  
*Sec. 754. Diesel fueled vehicles.*  
*Sec. 757. Biodiesel engine testing program.*  
*Sec. 759. Ultra-efficient engine technology for aircraft.*

*Subtitle E—Automobile Efficiency*

- Sec. 771. Authorization of appropriations for implementation and enforcement of fuel economy standards.*  
*Sec. 772. Revised considerations for decisions on maximum feasible average fuel economy.*  
*Sec. 773. Extension of maximum fuel economy increase for alternative fueled vehicles.*  
*Sec. 774. Study of feasibility and effects of reducing use of fuel for automobiles.*

*TITLE VIII—HYDROGEN*

- Sec. 801. Definitions.*  
*Sec. 802. Plan.*  
*Sec. 803. Programs.*  
*Sec. 804. Interagency task force.*  
*Sec. 805. Advisory Committee.*  
*Sec. 806. External review.*  
*Sec. 807. Miscellaneous provisions.*  
*Sec. 808. Savings clause.*  
*Sec. 809. Authorization of appropriations.*  
*Sec. 810. Solar and wind technologies.*

*TITLE IX—STUDIES AND PROGRAM SUPPORT*

*Sec. 901. Goals.*

*Sec. 902. Definitions.*

*Subtitle A—Energy Efficiency*

*Sec. 904. Energy efficiency.*

*Sec. 905. Next Generation Lighting Initiative.*

*Sec. 906. National Building Performance Initiative.*

*Sec. 907. Secondary electric vehicle battery use program.*

*Sec. 908. Energy efficiency study initiative.*

*Sec. 909. Electric motor control technology.*

*Subtitle B—Distributed Energy and Electric Energy Systems*

*Sec. 911. Distributed energy and electric energy systems.*

*Sec. 913. High power density industry program.*

*Sec. 916. Reciprocating power.*

*Sec. 917. Advanced portable power devices.*

*Subtitle C—Renewable Energy*

*Sec. 918. Renewable energy.*

*Sec. 919. Bioenergy programs.*

*Sec. 920. Concentrating solar power study program.*

*Sec. 921. Miscellaneous projects.*

*Sec. 922. Renewable energy in public buildings.*

*Sec. 923. University biodiesel program.*

*Subtitle D—Nuclear Energy*

*Sec. 929. Alternatives to industrial radioactive sources.*

*Sec. 930. Geological isolation of spent fuel.*

*Subtitle E—Fossil Energy*

*PART I—STUDIES AND PROGRAM SUPPORT*

*Sec. 931. Fossil energy.*

*Sec. 932. Oil and gas studies.*

*Sec. 933. Technology transfer.*

*Sec. 934. Coal mining technologies.*

*Sec. 935. Coal and related technologies program.*

*Sec. 936. Complex Well Technology Testing Facility.*

*PART II—ULTRA-DEEPWATER AND UNCONVENTIONAL NATURAL GAS AND OTHER  
PETROLEUM RESOURCES*

*Sec. 941. Program authority.*

*Sec. 942. Ultra-deepwater Program.*

*Sec. 943. Unconventional natural gas and other petroleum resources Program.*

*Sec. 944. Additional requirements for awards.*

*Sec. 945. Advisory committees.*

*Sec. 946. Limits on participation.*

*Sec. 947. Sunset.*

*Sec. 948. Definitions.*

*Sec. 949. Funding.*

*Subtitle F—Energy Sciences*

- Sec. 953. Plan for Fusion Energy Sciences Program.*  
*Sec. 954. Spallation Neutron Source.*  
*Sec. 962. Nitrogen fixation.*

*Subtitle G—Energy and environment*

- Sec. 966. Waste reduction and use of alternatives.*  
*Sec. 967. Report on fuel cell test center.*  
*Sec. 968. Arctic Engineering Research Center.*  
*Sec. 970. Western Michigan demonstration project.*  
*Sec. 971. Low-cost hydrogen propulsion and infrastructure.*  
*Sec. 972. Carbon-based fuel cell development.*

*Subtitle H—International Cooperation*

- Sec. 981. United States-Israel cooperation.*

*TITLE X—DEPARTMENT OF ENERGY MANAGEMENT*

- Sec. 1001. Additional Assistant Secretary position.*  
*Sec. 1002. Other transactions authority.*  
*Sec. 1003. University collaboration.*  
*Sec. 1004. Sense of Congress.*

*TITLE XII—ELECTRICITY*

- Sec. 1201. Short title.*

*Subtitle A—Reliability Standards*

- Sec. 1211. Electric reliability standards.*

*Subtitle B—Transmission Infrastructure Modernization*

- Sec. 1221. Siting of interstate electric transmission facilities.*  
*Sec. 1222. Third-party finance.*  
*Sec. 1223. Transmission system monitoring.*  
*Sec. 1224. Advanced transmission technologies.*  
*Sec. 1225. Electric transmission and distribution programs.*  
*Sec. 1226. Advanced Power System Technology Incentive Program.*  
*Sec. 1227. Office of Electric Transmission and Distribution.*

*Subtitle C—Transmission Operation Improvements*

- Sec. 1231. Open nondiscriminatory access.*  
*Sec. 1232. Sense of Congress on Regional Transmission Organizations.*  
*Sec. 1233. Regional Transmission Organization applications progress report.*  
*Sec. 1234. Federal utility participation in Regional Transmission Organizations.*  
*Sec. 1235. Standard market design.*  
*Sec. 1236. Native load service obligation.*  
*Sec. 1237. Study on the benefits of economic dispatch.*

*Subtitle D—Transmission Rate Reform*

- Sec. 1241. Transmission infrastructure investment.*



*Subtitle E—Amendments to PURPA*

- Sec. 1251. Net metering and additional standards.*  
*Sec. 1252. Smart metering.*  
*Sec. 1253. Cogeneration and small power production purchase and sale requirements.*  
*Sec. 1254. Interconnection.*

*Subtitle F—Repeal of PUHCA*

- Sec. 1261. Short title.*  
*Sec. 1262. Definitions.*  
*Sec. 1263. Repeal of the Public Utility Holding Company Act of 1935.*  
*Sec. 1264. Federal access to books and records.*  
*Sec. 1265. State access to books and records.*  
*Sec. 1266. Exemption authority.*  
*Sec. 1267. Affiliate transactions.*  
*Sec. 1268. Applicability.*  
*Sec. 1269. Effect on other regulations.*  
*Sec. 1270. Enforcement.*  
*Sec. 1271. Savings provisions.*  
*Sec. 1272. Implementation.*  
*Sec. 1273. Transfer of resources.*  
*Sec. 1274. Effective date.*  
*Sec. 1275. Service allocation.*  
*Sec. 1276. Authorization of appropriations.*  
*Sec. 1277. Conforming amendments to the Federal Power Act.*

*Subtitle G—Market Transparency, Enforcement, and Consumer Protection*

- Sec. 1281. Market transparency rules.*  
*Sec. 1282. Market manipulation.*  
*Sec. 1283. Enforcement.*  
*Sec. 1284. Refund effective date.*  
*Sec. 1285. Refund authority.*  
*Sec. 1286. Sanctity of contract.*  
*Sec. 1287. Consumer privacy and unfair trade practices.*

*Subtitle H—Merger Reform*

- Sec. 1291. Merger review reform and accountability.*  
*Sec. 1292. Electric utility mergers.*

*Subtitle I—Definitions*

- Sec. 1295. Definitions.*

*Subtitle J—Technical and Conforming Amendments*

- Sec. 1297. Conforming amendments.*

*Subtitle K—Economic Dispatch*

- Sec. 1298. Economic dispatch.*

## TITLE XIV—MISCELLANEOUS

*Subtitle C—Other Provisions*

- Sec. 1441. Continuation of transmission security order.*
- Sec. 1442. Review of agency determinations.*
- Sec. 1443. Attainment dates for downwind ozone nonattainment areas.*
- Sec. 1444. Energy production incentives.*
- Sec. 1446. Regulation of certain oil used in transformers.*
- Sec. 1447. Risk assessments.*
- Sec. 1448. Oxygen-fuel.*
- Sec. 1449. Petrochemical and oil refinery facility health assessment.*

## TITLE XV—ETHANOL AND MOTOR FUELS

*Subtitle A—General Provisions*

- Sec. 1501. Renewable content of motor vehicle fuel.*
- Sec. 1502. Fuels safe harbor.*
- Sec. 1503. Findings and MTBE transition assistance.*
- Sec. 1504. Use of MTBE.*
- Sec. 1505. National Academy of Sciences review and presidential determination.*
- Sec. 1506. Elimination of oxygen content requirement for reformulated gasoline.*
- Sec. 1507. Analyses of motor vehicle fuel changes.*
- Sec. 1508. Data collection.*
- Sec. 1509. Reducing the proliferation of State fuel controls.*
- Sec. 1510. Fuel system requirements harmonization study.*
- Sec. 1511. Commercial byproducts from municipal solid waste and cellulosic biomass loan guarantee program.*
- Sec. 1512. Cellulosic biomass and waste-derived ethanol conversion assistance.*
- Sec. 1513. Blending of compliant reformulated gasolines.*

*Subtitle B—Underground Storage Tank Compliance*

- Sec. 1521. Short title.*
- Sec. 1522. Leaking underground storage tanks.*
- Sec. 1523. Inspection of underground storage tanks.*
- Sec. 1524. Operator training.*
- Sec. 1525. Remediation from oxygenated fuel additives.*
- Sec. 1526. Release prevention, compliance, and enforcement.*
- Sec. 1527. Delivery prohibition.*
- Sec. 1528. Federal facilities.*
- Sec. 1529. Tanks on Tribal lands.*
- Sec. 1530. Additional measures to protect groundwater.*
- Sec. 1531. Authorization of appropriations.*
- Sec. 1532. Conforming amendments.*
- Sec. 1533. Technical amendments.*

*Subtitle C—Boutique Fuels*

- Sec. 1541. Reducing the proliferation of boutique fuels.*

## TITLE XVI—STUDIES

- Sec. 1601. Study on inventory of petroleum and natural gas storage.*
- Sec. 1605. Study of energy efficiency standards.*
- Sec. 1606. Telecommuting study.*
- Sec. 1607. LIHEAP report.*

*Sec. 1608. Oil bypass filtration technology.*  
*Sec. 1609. Total integrated thermal systems.*  
*Sec. 1610. University collaboration.*  
*Sec. 1611. Reliability and consumer protection assessment.*  
*Sec. 1612. Report on energy integration with Latin America.*  
*Sec. 1613. Low-volume gas reservoir study.*

# ***TITLE I—ENERGY EFFICIENCY***

## ***Subtitle A—Federal Programs***

### ***SEC. 101. ENERGY AND WATER SAVING MEASURES IN CON- GRESSIONAL BUILDINGS.***

*(a) IN GENERAL.—Part 3 of title V of the National  
Energy Conservation Policy Act (42 U.S.C. 8251 et seq.)  
is amended by adding at the end the following:*

### ***“SEC. 552. ENERGY AND WATER SAVINGS MEASURES IN CONGRESSIONAL BUILDINGS.***

*“(a) IN GENERAL.—The Architect of the Capitol—*

*“(1) shall develop, update, and implement a cost-  
effective energy conservation and management plan  
(referred to in this section as the ‘plan’) for all facili-  
ties administered by Congress (referred to in this sec-  
tion as ‘congressional buildings’) to meet the energy  
performance requirements for Federal buildings estab-  
lished under section 543(a)(1); and*

*“(2) shall submit the plan to Congress, not later  
than 180 days after the date of enactment of this sec-  
tion.*

*“(b) PLAN REQUIREMENTS.—The plan shall include—*

1           “(1) a description of the life cycle cost analysis  
2           used to determine the cost-effectiveness of proposed en-  
3           ergy efficiency projects;

4           “(2) a schedule of energy surveys to ensure com-  
5           plete surveys of all congressional buildings every 5  
6           years to determine the cost and payback period of en-  
7           ergy and water conservation measures;

8           “(3) a strategy for installation of life cycle cost-  
9           effective energy and water conservation measures;

10           “(4) the results of a study of the costs and bene-  
11           fits of installation of submetering in congressional  
12           buildings; and

13           “(5) information packages and ‘how-to’ guides  
14           for each Member and employing authority of Congress  
15           that detail simple, cost-effective methods to save en-  
16           ergy and taxpayer dollars in the workplace.

17           “(c) ANNUAL REPORT.—The Architect of the Capitol  
18           shall submit to Congress annually a report on congressional  
19           energy management and conservation programs required  
20           under this section that describes in detail—

21           “(1) energy expenditures and savings estimates  
22           for each facility;

23           “(2) energy management and conservation  
24           projects; and

1           “(3) future priorities to ensure compliance with  
2       this section.”.

3       (b) *TABLE OF CONTENTS AMENDMENT.*—The table of  
4 contents of the National Energy Conservation Policy Act  
5 is amended by adding at the end of the items relating to  
6 part 3 of title V the following new item:

      “Sec. 552. Energy and water savings measures in congressional buildings.”.

7       (c) *REPEAL.*—Section 310 of the Legislative Branch  
8 Appropriations Act, 1999 (2 U.S.C. 1815), is repealed.

9       (d) *ENERGY INFRASTRUCTURE.*—The Architect of the  
10 Capitol, building on the Master Plan Study completed in  
11 July 2000, shall commission a study to evaluate the energy  
12 infrastructure of the Capital Complex to determine how the  
13 infrastructure could be augmented to become more energy  
14 efficient, using unconventional and renewable energy re-  
15 sources, in a way that would enable the Complex to have  
16 reliable utility service in the event of power fluctuations,  
17 shortages, or outages.

18       (e) *AUTHORIZATION OF APPROPRIATIONS.*—There are  
19 authorized to be appropriated to the Architect of the Capitol  
20 to carry out subsection (d), \$2,000,000 for each of fiscal  
21 years 2006 through 2010.

22 **SEC. 102. ENERGY MANAGEMENT REQUIREMENTS.**

23       (a) *ENERGY REDUCTION GOALS.*—

24           (1) *AMENDMENT.*—Section 543(a)(1) of the Na-  
25 tional Energy Conservation Policy Act (42 U.S.C.

1       8253(a)(1)) is amended by striking “its Federal  
 2       buildings so that” and all that follows through the  
 3       end and inserting “the Federal buildings of the agen-  
 4       cy (including each industrial or laboratory facility)  
 5       so that the energy consumption per gross square foot  
 6       of the Federal buildings of the agency in fiscal years  
 7       2006 through 2015 is reduced, as compared with the  
 8       energy consumption per gross square foot of the Fed-  
 9       eral buildings of the agency in fiscal year 2003, by  
 10      the percentage specified in the following table:

<b>“Fiscal Year</b>	<b>Percentage reduction</b>
2006 .....	2
2007 .....	4
2008 .....	6
2009 .....	8
2010 .....	10
2011 .....	12
2012 .....	14
2013 .....	16
2014 .....	18
2015 .....	20.”.

11           (2) *REPORTING BASELINE.*—The energy reduc-  
 12       tion goals and baseline established in paragraph (1)  
 13       of section 543(a) of the National Energy Conservation  
 14       Policy Act (42 U.S.C. 8253(a)(1)), as amended by  
 15       this subsection, supersede all previous goals and base-  
 16       lines under such paragraph, and related reporting re-  
 17       quirements.

18           (b) *REVIEW AND REVISION OF ENERGY PERFORMANCE*  
 19       *REQUIREMENT.*—Section 543(a) of the National Energy

1 *Conservation Policy Act (42 U.S.C. 8253(a)) is further*  
2 *amended by adding at the end the following:*

3       “(3) Not later than December 31, 2014, the Secretary  
4 shall review the results of the implementation of the energy  
5 performance requirement established under paragraph (1)  
6 and submit to Congress recommendations concerning en-  
7 ergy performance requirements for fiscal years 2016  
8 through 2025.”.

9       (c) *EXCLUSIONS.*—Section 543(c)(1) of the National  
10 *Energy Conservation Policy Act (42 U.S.C. 8253(c)(1)) is*  
11 *amended by striking “An agency may exclude” and all that*  
12 *follows through the end and inserting “(A) An agency may*  
13 *exclude, from the energy performance requirement for a fis-*  
14 *cal year established under subsection (a) and the energy*  
15 *management requirement established under subsection (b),*  
16 *any Federal building or collection of Federal buildings, if*  
17 *the head of the agency finds that—*

18               “(i) compliance with those requirements would  
19 be impracticable;

20               “(ii) the agency has completed and submitted all  
21 federally required energy management reports;

22               “(iii) the agency has achieved compliance with  
23 the energy efficiency requirements of this Act, the En-  
24 ergy Policy Act of 1992, Executive orders, and other  
25 Federal law; and

1           “(iv) the agency has implemented all practicable,  
 2       life cycle cost-effective projects with respect to the Fed-  
 3       eral building or collection of Federal buildings to be  
 4       excluded.

5       “(B) A finding of impracticability under subpara-  
 6 graph (A)(i) shall be based on—

7           “(i) the energy intensiveness of activities carried  
 8       out in the Federal building or collection of Federal  
 9       buildings; or

10          “(ii) the fact that the Federal building or collec-  
 11       tion of Federal buildings is used in the performance  
 12       of a national security function.”.

13       (d) *REVIEW BY SECRETARY*.—Section 543(c)(2) of the  
 14 *National Energy Conservation Policy Act* (42 U.S.C.  
 15 8253(c)(2)) is amended—

16           (1) by striking “impracticability standards” and  
 17       inserting “standards for exclusion”;

18           (2) by striking “a finding of impracticability”  
 19       and inserting “the exclusion”; and

20           (3) by striking “energy consumption require-  
 21       ments” and inserting “requirements of subsections (a)  
 22       and (b)(1)”.

23       (e) *CRITERIA*.—Section 543(c) of the *National Energy*  
 24 *Conservation Policy Act* (42 U.S.C. 8253(c)) is further  
 25 amended by adding at the end the following:



1       “(3) Not later than 180 days after the date of enact-  
 2       ment of this paragraph, the Secretary shall issue guidelines  
 3       that establish criteria for exclusions under paragraph (1).”.

4       (f) *RETENTION OF ENERGY AND WATER SAVINGS.*—  
 5       Section 546 of the National Energy Conservation Policy Act  
 6       (42 U.S.C. 8256) is amended by adding at the end the fol-  
 7       lowing new subsection:

8       “(e) *RETENTION OF ENERGY AND WATER SAVINGS.*—  
 9       An agency may retain any funds appropriated to that  
 10       agency for energy expenditures, water expenditures, or  
 11       wastewater treatment expenditures, at buildings subject to  
 12       the requirements of section 543(a) and (b), that are not  
 13       made because of energy savings or water savings. Except  
 14       as otherwise provided by law, such funds may be used only  
 15       for energy efficiency, water conservation, or unconventional  
 16       and renewable energy resources projects.”.

17       (g) *REPORTS.*—Section 548(b) of the National Energy  
 18       Conservation Policy Act (42 U.S.C. 8258(b)) is amended—

19               (1) in the subsection heading, by inserting “*THE*  
 20       *PRESIDENT AND*” before “*CONGRESS*”; and

21               (2) by inserting “*President and*” before “*Con-*  
 22       *gress*”.

23       (h) *CONFORMING AMENDMENT.*—Section 550(d) of the  
 24       National Energy Conservation Policy Act (42 U.S.C.  
 25       8258b(d)) is amended in the second sentence by striking

1 “the 20 percent reduction goal established under section  
 2 543(a) of the National Energy Conservation Policy Act (42  
 3 U.S.C. 8253(a)).” and inserting “each of the energy reduc-  
 4 tion goals established under section 543(a).”.

5 **SEC. 103. ENERGY USE MEASUREMENT AND ACCOUNT-**  
 6 **ABILITY.**

7 Section 543 of the National Energy Conservation Pol-  
 8 icy Act (42 U.S.C. 8253) is further amended by adding at  
 9 the end the following:

10 “(e) *METERING OF ENERGY USE.*—

11 “(1) *DEADLINE.*—By October 1, 2012, in accord-  
 12 ance with guidelines established by the Secretary  
 13 under paragraph (2), all Federal buildings shall, for  
 14 the purposes of efficient use of energy and reduction  
 15 in the cost of electricity used in such buildings, be me-  
 16 tered or submetered. Each agency shall use, to the  
 17 maximum extent practicable, advanced meters or ad-  
 18 vanced metering devices that provide data at least  
 19 daily and that measure at least hourly consumption  
 20 of electricity in the Federal buildings of the agency.  
 21 Such data shall be incorporated into existing Federal  
 22 energy tracking systems and made available to Fed-  
 23 eral facility energy managers.

24 “(2) *GUIDELINES.*—

1           “(A) *IN GENERAL.*—Not later than 180  
2           *days after the date of enactment of this sub-*  
3           *section, the Secretary, in consultation with the*  
4           *Department of Defense, the General Services Ad-*  
5           *ministration, representatives from the metering*  
6           *industry, utility industry, energy services indus-*  
7           *try, energy efficiency industry, energy efficiency*  
8           *advocacy organizations, national laboratories,*  
9           *universities, and Federal facility energy man-*  
10          *agers, shall establish guidelines for agencies to*  
11          *carry out paragraph (1).*

12           “(B) *REQUIREMENTS FOR GUIDELINES.*—  
13          *The guidelines shall—*

14                   “(i) *take into consideration—*

15                           “(I) *the cost of metering and sub-*  
16                           *metering and the reduced cost of oper-*  
17                           *ation and maintenance expected to re-*  
18                           *sult from metering and submetering;*

19                           “(II) *the extent to which metering*  
20                           *and submetering are expected to result*  
21                           *in increased potential for energy man-*  
22                           *agement, increased potential for energy*  
23                           *savings and energy efficiency improve-*  
24                           *ment, and cost and energy savings due*  
25                           *to utility contract aggregation; and*

1                   “(III) the measurement and  
2                   verification protocols of the Depart-  
3                   ment of Energy;

4                   “(ii) include recommendations con-  
5                   cerning the amount of funds and the num-  
6                   ber of trained personnel necessary to gather  
7                   and use the metering information to track  
8                   and reduce energy use;

9                   “(iii) establish priorities for types and  
10                  locations of buildings to be metered and  
11                  submetered based on cost-effectiveness and a  
12                  schedule of 1 or more dates, not later than  
13                  1 year after the date of issuance of the  
14                  guidelines, on which the requirements speci-  
15                  fied in paragraph (1) shall take effect; and

16                  “(iv) establish exclusions from the re-  
17                  quirements specified in paragraph (1) based  
18                  on the de minimis quantity of energy use of  
19                  a Federal building, industrial process, or  
20                  structure.

21                  “(3) *PLAN*.—Not later than 6 months after the  
22                  date guidelines are established under paragraph (2),  
23                  in a report submitted by the agency under section  
24                  548(a), each agency shall submit to the Secretary a  
25                  plan describing how the agency will implement the

(a) *REQUIREMENTS.*—Part 3 of title V of the National Energy Conservation Policy Act (42 U.S.C. 8251 et seq.), as amended by section 101, is amended by adding at the end the following:

16      “(a) *DEFINITIONS.*—*In this section:*

“(2) *ENERGY STAR PRODUCT.*—The term ‘Energy Star product’ means a product that is rated for energy efficiency under an Energy Star program.

•HR 1640 RH

1        *section 324A of the Energy Policy and Conservation*  
 2        *Act.*

3                “(4) *FEMP DESIGNATED PRODUCT.*—*The term*  
 4        *‘FEMP designated product’ means a product that is*  
 5        *designated under the Federal Energy Management*  
 6        *Program of the Department of Energy as being*  
 7        *among the highest 25 percent of equivalent products*  
 8        *for energy efficiency.*

9                “(b) *PROCUREMENT OF ENERGY EFFICIENT PROD-*  
 10        *UCTS.*—

11                “(1) *REQUIREMENT.*—*To meet the requirements*  
 12        *of an agency for an energy consuming product, the*  
 13        *head of the agency shall, except as provided in para-*  
 14        *graph (2), procure—*

15                        “(A) *an Energy Star product; or*

16                        “(B) *a FEMP designated product.*

17                “(2) *EXCEPTIONS.*—*The head of an agency is not*  
 18        *required to procure an Energy Star product or*  
 19        *FEMP designated product under paragraph (1) if the*  
 20        *head of the agency finds in writing that—*

21                        “(A) *an Energy Star product or FEMP des-*  
 22        *ignated product is not cost-effective over the life*  
 23        *of the product taking energy cost savings into ac-*  
 24        *count; or*

1                   “(B) no *Energy Star* product or *FEMP* des-  
2                   ignated product is reasonably available that  
3                   meets the functional requirements of the agency.

4                   “(3) *PROCUREMENT PLANNING*.—The head of an  
5                   agency shall incorporate into the specifications for all  
6                   procurements involving energy consuming products  
7                   and systems, including guide specifications, project  
8                   specifications, and construction, renovation, and serv-  
9                   ices contracts that include provision of energy con-  
10                  suming products and systems, and into the factors for  
11                  the evaluation of offers received for the procurement,  
12                  criteria for energy efficiency that are consistent with  
13                  the criteria used for rating *Energy Star* products and  
14                  for rating *FEMP* designated products.

15                  “(c) *LISTING OF ENERGY EFFICIENT PRODUCTS IN*  
16                  *FEDERAL CATALOGS*.—*Energy Star* products and *FEMP*  
17                  designated products shall be clearly identified and promi-  
18                  nently displayed in any inventory or listing of products  
19                  by the General Services Administration or the Defense Lo-  
20                  gistics Agency. The General Services Administration or the  
21                  Defense Logistics Agency shall supply only *Energy Star*  
22                  products or *FEMP* designated products for all product cat-  
23                  egories covered by the *Energy Star* program or the Federal  
24                  Energy Management Program, except in cases where the  
25                  agency ordering a product specifies in writing that no En-

1 *ergy Star product or FEMP designated product is available*  
 2 *to meet the buyer's functional requirements, or that no En-*  
 3 *ergy Star product or FEMP designated product is cost-effec-*  
 4 *tive for the intended application over the life of the product,*  
 5 *taking energy cost savings into account.*

6       “(d) *SPECIFIC PRODUCTS.—(1) In the case of electric*  
 7 *motors of 1 to 500 horsepower, agencies shall select only*  
 8 *premium efficient motors that meet a standard designated*  
 9 *by the Secretary. The Secretary shall designate such a*  
 10 *standard not later than 120 days after the date of the enact-*  
 11 *ment of this section, after considering the recommendations*  
 12 *of associated electric motor manufacturers and energy effi-*  
 13 *ciency groups.*

14       “(2) *All Federal agencies are encouraged to take ac-*  
 15 *tions to maximize the efficiency of air conditioning and re-*  
 16 *frigeration equipment, including appropriate cleaning and*  
 17 *maintenance, including the use of any system treatment or*  
 18 *additive that will reduce the electricity consumed by air*  
 19 *conditioning and refrigeration equipment. Any such treat-*  
 20 *ment or additive must be—*

21               “(A) *determined by the Secretary to be effective*  
 22 *in increasing the efficiency of air conditioning and*  
 23 *refrigeration equipment without having an adverse*  
 24 *impact on air conditioning performance (including*  
 25 *cooling capacity) or equipment useful life;*



1           “(B) determined by the Administrator of the En-  
 2           vironmental Protection Agency to be environmentally  
 3           safe; and

4           “(C) shown to increase seasonal energy efficiency  
 5           ratio (SEER) or energy efficiency ratio (EER) when  
 6           tested by the National Institute of Standards and  
 7           Technology according to Department of Energy test  
 8           procedures without causing any adverse impact on  
 9           the system, system components, the refrigerant or lu-  
 10          bricant, or other materials in the system.

11          Results of testing described in subparagraph (C) shall be  
 12          published in the Federal Register for public review and  
 13          comment. For purposes of this section, a hardware device  
 14          or primary refrigerant shall not be considered an additive.

15          “(e) REGULATIONS.—Not later than 180 days after the  
 16          date of the enactment of this section, the Secretary shall  
 17          issue guidelines to carry out this section.”.

18          (b) CONFORMING AMENDMENT.—The table of contents  
 19          of the National Energy Conservation Policy Act is further  
 20          amended by inserting after the item relating to section 552  
 21          the following new item:

          “Sec. 553. Federal procurement of energy efficient products.”.

22          **SEC. 105. ENERGY SAVINGS PERFORMANCE CONTRACTS.**

23          (a) LIMITATIONS.—

24                 (1) IN GENERAL.—Section 801(a)(2) of the Na-  
 25          tional Energy Conservation Policy Act (42 U.S.C.

1       8287(a)(2)) is amended by adding at the end the fol-  
 2       lowing subparagraph:

3       “(E) All Federal agencies combined may not, after the  
 4       date of enactment of the Energy Policy Act of 2005, enter  
 5       into more than a total of 100 contracts under this title.  
 6       Payments made by the Federal Government under all con-  
 7       tracts permitted by this subparagraph combined shall not  
 8       exceed a total of \$500,000,000. Each Federal agency shall  
 9       appoint a coordinator for Energy Savings Performance  
 10      Contracts with the responsibility to monitor the number of  
 11      such contracts for that Federal agency and the investment  
 12      value of each contract. The coordinators for each Federal  
 13      agency shall meet monthly to ensure that the limits speci-  
 14      fied in this subparagraph on the number of contracts and  
 15      the payments made for the contracts are not exceeded.”.

16           (2) DEFINITION.—Section 804(1) of the National  
 17      Energy Conservation Policy Act (42 U.S.C. 8287c(1))  
 18      is amended to read as follows:

19           “(1) The term ‘Federal agency’ means the De-  
 20      partment of Defense, the Department of Veterans Af-  
 21      fairs, and the Department of Energy.”.

22           (3) VALIDITY OF CONTRACTS.—The amendments  
 23      made by this subsection shall not affect the validity  
 24      of contracts entered into under title VIII of the Na-  
 25      tional Energy Conservation Policy Act (42 U.S.C.

1       8287 et seq.) before the date of enactment of this Act,  
2       or of contracts described in subsection (h).

3       (b) *PERMANENT EXTENSION*.—Effective October 1,  
4 2006, section 801(c) of the National Energy Conservation  
5 Policy Act (42 U.S.C. 8287(c)) is repealed.

6       (c) *REVIEW*.—Not later than 180 days after the date  
7 of the enactment of this Act, the Secretary of Energy shall  
8 complete a review of the Energy Savings Performance Con-  
9 tract program to identify statutory, regulatory, and admin-  
10 istrative obstacles that prevent Federal agencies from fully  
11 utilizing the program. In addition, this review shall iden-  
12 tify all areas for increasing program flexibility and effec-  
13 tiveness, including audit and measurement verification re-  
14 quirements, accounting for energy use in determining sav-  
15 ings, contracting requirements, including the identification  
16 of additional qualified contractors, and energy efficiency  
17 services covered. The Secretary shall report these findings  
18 to Congress and shall implement identified administrative  
19 and regulatory changes to increase program flexibility and  
20 effectiveness to the extent that such changes are consistent  
21 with statutory authority.

22       (d) *EXTENSION OF AUTHORITY*.—Any energy savings  
23 performance contract entered into under section 801 of the  
24 National Energy Conservation Policy Act (42 U.S.C. 8287)  
25 after October 1, 2006, and before the date of enactment of

1 *this Act, shall be deemed to have been entered into pursuant*  
 2 *to such section 801 as amended by subsection (a) of this*  
 3 *section.*

4 **SEC. 107. VOLUNTARY COMMITMENTS TO REDUCE INDUS-**  
 5 **TRIAL ENERGY INTENSITY.**

6 (a) *VOLUNTARY AGREEMENTS.—The Secretary of En-*  
 7 *ergy is authorized to enter into voluntary agreements with*  
 8 *1 or more persons in industrial sectors that consume sig-*  
 9 *nificant amounts of primary energy per unit of physical*  
 10 *output to reduce the energy intensity of their production*  
 11 *activities by a significant amount relative to improvements*  
 12 *in each sector in recent years.*

13 (b) *RECOGNITION.—The Secretary of Energy, in co-*  
 14 *operation with the Administrator of the Environmental*  
 15 *Protection Agency and other appropriate Federal agencies,*  
 16 *shall recognize and publicize the achievements of partici-*  
 17 *pants in voluntary agreements under this section.*

18 (c) *DEFINITION.—In this section, the term “energy in-*  
 19 *tensity” means the primary energy consumed per unit of*  
 20 *physical output in an industrial process.*

21 **SEC. 108. ADVANCED BUILDING EFFICIENCY TESTBED.**

22 (a) *ESTABLISHMENT.—The Secretary of Energy, in*  
 23 *consultation with the Administrator of General Services,*  
 24 *shall establish an Advanced Building Efficiency Testbed*  
 25 *program for the development, testing, and demonstration of*

1 *advanced engineering systems, components, and materials*  
2 *to enable innovations in building technologies. The program*  
3 *shall evaluate efficiency concepts for government and indus-*  
4 *try buildings, and demonstrate the ability of next genera-*  
5 *tion buildings to support individual and organizational*  
6 *productivity and health (including by improving indoor air*  
7 *quality) as well as flexibility and technological change to*  
8 *improve environmental sustainability. Such program shall*  
9 *complement and not duplicate existing national programs.*

10       **(b) PARTICIPANTS.**—*The program established under*  
11 *subsection (a) shall be led by a university with the ability*  
12 *to combine the expertise from numerous academic fields in-*  
13 *cluding, at a minimum, intelligent workplaces and ad-*  
14 *vanced building systems and engineering, electrical and*  
15 *computer engineering, computer science, architecture,*  
16 *urban design, and environmental and mechanical engineer-*  
17 *ing. Such university shall partner with other universities*  
18 *and entities who have established programs and the capa-*  
19 *bility of advancing innovative building efficiency tech-*  
20 *nologies.*

21       **(c) AUTHORIZATION OF APPROPRIATIONS.**—*There are*  
22 *authorized to be appropriated to the Secretary of Energy*  
23 *to carry out this section \$6,000,000 for each of the fiscal*  
24 *years 2006 through 2008, to remain available until ex-*  
25 *pended. For any fiscal year in which funds are expended*

1 *under this section, the Secretary shall provide  $\frac{1}{3}$  of the total*  
 2 *amount to the lead university described in subsection (b),*  
 3 *and provide the remaining  $\frac{2}{3}$  to the other participants re-*  
 4 *ferred to in subsection (b) on an equal basis.*

5 **SEC. 109. FEDERAL BUILDING PERFORMANCE STANDARDS.**

6 *Section 305(a) of the Energy Conservation and Pro-*  
 7 *duction Act (42 U.S.C. 6834(a)) is amended—*

8 *(1) in paragraph (2)(A), by striking “CABO*  
 9 *Model Energy Code, 1992” and inserting “the 2003*  
 10 *International Energy Conservation Code”; and*

11 *(2) by adding at the end the following:*

12 *“(3) REVISED FEDERAL BUILDING ENERGY EFFI-*  
 13 *CIENCY PERFORMANCE STANDARDS.—*

14 *“(A) IN GENERAL.—Not later than 1 year after*  
 15 *the date of enactment of this paragraph, the Secretary*  
 16 *of Energy shall establish, by rule, revised Federal*  
 17 *building energy efficiency performance standards that*  
 18 *require that—*

19 *“(i) if life-cycle cost-effective, for new Fed-*  
 20 *eral buildings—*

21 *“(I) such buildings be designed so as to*  
 22 *achieve energy consumption levels at least*  
 23 *30 percent below those of the version current*  
 24 *as of the date of enactment of this para-*  
 25 *graph of the ASHRAE Standard or the*

1                   *International Energy Conservation Code, as*  
2                   *appropriate; and*

3                   “(II) *sustainable design principles are*  
4                   *applied to the siting, design, and construc-*  
5                   *tion of all new and replacement buildings;*  
6                   *and*

7                   “(ii) *where water is used to achieve energy*  
8                   *efficiency, water conservation technologies shall*  
9                   *be applied to the extent they are life-cycle cost ef-*  
10                  *fective.*

11                  “(B) *ADDITIONAL REVISIONS.—Not later than 1*  
12                  *year after the date of approval of each subsequent re-*  
13                  *vision of the ASHRAE Standard or the International*  
14                  *Energy Conservation Code, as appropriate, the Sec-*  
15                  *retary of Energy shall determine, based on the cost-*  
16                  *effectiveness of the requirements under the amend-*  
17                  *ments, whether the revised standards established*  
18                  *under this paragraph should be updated to reflect the*  
19                  *amendments.*

20                  “(C) *STATEMENT ON COMPLIANCE OF NEW*  
21                  *BUILDINGS.—In the budget request of the Federal*  
22                  *agency for each fiscal year and each report submitted*  
23                  *by the Federal agency under section 548(a) of the Na-*  
24                  *tional Energy Conservation Policy Act (42 U.S.C.*

1       8258(a)), the head of each Federal agency shall in-  
2       clude—

3               “(i) a list of all new Federal buildings  
4               owned, operated, or controlled by the Federal  
5               agency; and

6               “(ii) a statement concerning whether the  
7               Federal buildings meet or exceed the revised  
8               standards established under this paragraph.”.

9       **SEC. 110. DAYLIGHT SAVINGS.**

10       (a) *REPEAL*.—Section 3(a) of the Uniform Time Act  
11       of 1966 (15 U.S.C. 260a(a)) is amended—

12               (1) by striking “April” and inserting “March”;  
13       and

14               (2) by striking “October” and inserting “Novem-  
15       ber”.

16       (b) *REPORT TO CONGRESS*.—Not later than 9 months  
17       after the date of enactment of this Act, the Secretary of En-  
18       ergy shall report to Congress on the impact this section on  
19       energy consumption in the United States.

20       **Subtitle B—Energy Assistance and**  
21       **State Programs**

22       **SEC. 121. LOW INCOME HOME ENERGY ASSISTANCE PRO-**  
23       **GRAM.**

24       (a) *AUTHORIZATION OF APPROPRIATIONS*.—Section  
25       2602(b) of the Low-Income Home Energy Assistance Act of



1 1981 (42 U.S.C. 8621(b)) is amended by striking “and  
 2 \$2,000,000,000 for each of fiscal years 2002 through 2004”  
 3 and inserting “and \$5,100,000,000 for each of fiscal years  
 4 2005 through 2007”.

5 (b) *RENEWABLE FUELS.*—*The Low-Income Home En-*  
 6 *ergy Assistance Act of 1981 (42 U.S.C. 8621 et seq.) is*  
 7 *amended by adding at the end the following new section:*

8 “*RENEWABLE FUELS*

9 “*SEC. 2612. In providing assistance pursuant to this*  
 10 *title, a State, or any other person with which the State*  
 11 *makes arrangements to carry out the purposes of this title,*  
 12 *may purchase renewable fuels, including biomass.”.*

13 (c) *REPORT TO CONGRESS.*—*The Secretary of Energy*  
 14 *shall report to Congress on the use of renewable fuels in*  
 15 *providing assistance under the Low-Income Home Energy*  
 16 *Assistance Act of 1981 (42 U.S.C. 8621 et seq.).*

17 **SEC. 122. WEATHERIZATION ASSISTANCE.**

18 (a) *AUTHORIZATION OF APPROPRIATIONS.*—*Section*  
 19 *422 of the Energy Conservation and Production Act (42*  
 20 *U.S.C. 6872) is amended by striking “for fiscal years 1999*  
 21 *through 2003 such sums as may be necessary” and inserting*  
 22 *“\$500,000,000 for fiscal year 2006, \$600,000,000 for fiscal*  
 23 *year 2007, and \$700,000,000 for fiscal year 2008”.*

24 (b) *ELIGIBILITY.*—*Section 412(7) of the Energy Con-*  
 25 *servation and Production Act (42 U.S.C. 6862(7)) is*

1 amended by striking “125 percent” both places it appears  
 2 and inserting “150 percent”.

3 **SEC. 123. STATE ENERGY PROGRAMS.**

4 (a) *STATE ENERGY CONSERVATION PLANS.*—Section  
 5 362 of the Energy Policy and Conservation Act (42 U.S.C.  
 6 6322) is amended by inserting at the end the following new  
 7 subsection:

8 “(g) The Secretary shall, at least once every 3 years,  
 9 invite the Governor of each State to review and, if nec-  
 10 essary, revise the energy conservation plan of such State  
 11 submitted under subsection (b) or (e). Such reviews should  
 12 consider the energy conservation plans of other States with-  
 13 in the region, and identify opportunities and actions car-  
 14 ried out in pursuit of common energy conservation goals.”.

15 (b) *STATE ENERGY EFFICIENCY GOALS.*—Section 364  
 16 of the Energy Policy and Conservation Act (42 U.S.C.  
 17 6324) is amended to read as follows:

18 “STATE ENERGY EFFICIENCY GOALS

19 “SEC. 364. Each State energy conservation plan with  
 20 respect to which assistance is made available under this  
 21 part on or after the date of enactment of the Energy Policy  
 22 Act of 2005 shall contain a goal, consisting of an improve-  
 23 ment of 25 percent or more in the efficiency of use of energy  
 24 in the State concerned in calendar year 2012 as compared  
 25 to calendar year 1990, and may contain interim goals.”.

1       (c) *AUTHORIZATION OF APPROPRIATIONS.*—Section  
 2   365(f) of the Energy Policy and Conservation Act (42  
 3   U.S.C. 6325(f)) is amended by striking “for fiscal years  
 4   1999 through 2003 such sums as may be necessary” and  
 5   inserting “\$100,000,000 for each of the fiscal years 2006  
 6   and 2007 and \$125,000,000 for fiscal year 2008”.

7   **SEC. 124. ENERGY EFFICIENT APPLIANCE REBATE PRO-**  
 8       **GRAMS.**

9       (a) *DEFINITIONS.*—In this section:

10           (1) *ELIGIBLE STATE.*—The term “eligible State”  
 11       means a State that meets the requirements of sub-  
 12       section (b).

13           (2) *ENERGY STAR PROGRAM.*—The term “Energy  
 14       Star program” means the program established by sec-  
 15       tion 324A of the Energy Policy and Conservation Act.

16           (3) *RESIDENTIAL ENERGY STAR PRODUCT.*—The  
 17       term “residential Energy Star product” means a  
 18       product for a residence that is rated for energy effi-  
 19       ciency under the Energy Star program.

20           (4) *SECRETARY.*—The term “Secretary” means  
 21       the Secretary of Energy.

22           (5) *STATE ENERGY OFFICE.*—The term “State  
 23       energy office” means the State agency responsible for  
 24       developing State energy conservation plans under sec-

1        *tion 362 of the Energy Policy and Conservation Act*  
 2        *(42 U.S.C. 6322).*

3            (6) *STATE PROGRAM.*—*The term “State pro-*  
 4        *gram” means a State energy efficient appliance re-*  
 5        *bate program described in subsection (b)(1).*

6            (b) *ELIGIBLE STATES.*—*A State shall be eligible to re-*  
 7        *ceive an allocation under subsection (c) if the State—*

8            (1) *establishes (or has established) a State energy*  
 9        *efficient appliance rebate program to provide rebates*  
 10       *to residential consumers for the purchase of residen-*  
 11       *tial Energy Star products to replace used appliances*  
 12       *of the same type;*

13          (2) *submits an application for the allocation at*  
 14        *such time, in such form, and containing such infor-*  
 15        *mation as the Secretary may require; and*

16          (3) *provides assurances satisfactory to the Sec-*  
 17        *retary that the State will use the allocation to supple-*  
 18        *ment, but not supplant, funds made available to*  
 19        *carry out the State program.*

20          (c) *AMOUNT OF ALLOCATIONS.*—

21          (1) *IN GENERAL.*—*Subject to paragraph (2), for*  
 22        *each fiscal year, the Secretary shall allocate to the*  
 23        *State energy office of each eligible State to carry out*  
 24        *subsection (d) an amount equal to the product ob-*  
 25        *tained by multiplying the amount made available*

1       under subsection (f) for the fiscal year by the ratio  
2       that the population of the State in the most recent  
3       calendar year for which data are available bears to  
4       the total population of all eligible States in that cal-  
5       endar year.

6               (2) *MINIMUM ALLOCATIONS.*—For each fiscal  
7       year, the amounts allocated under this subsection  
8       shall be adjusted proportionately so that no eligible  
9       State is allocated a sum that is less than an amount  
10      determined by the Secretary.

11             (d) *USE OF ALLOCATED FUNDS.*—The allocation to a  
12      State energy office under subsection (c) may be used to pay  
13      up to 50 percent of the cost of establishing and carrying  
14      out a State program.

15             (e) *ISSUANCE OF REBATES.*—Rebates may be provided  
16      to residential consumers that meet the requirements of the  
17      State program. The amount of a rebate shall be determined  
18      by the State energy office, taking into consideration—

19               (1) the amount of the allocation to the State en-  
20      ergy office under subsection (c);

21               (2) the amount of any Federal or State tax in-  
22      centive available for the purchase of the residential  
23      Energy Star product; and

24               (3) the difference between the cost of the residen-  
25      tial Energy Star product and the cost of an appliance

1        *that is not a residential Energy Star product, but is*  
 2        *of the same type as, and is the nearest capacity, per-*  
 3        *formance, and other relevant characteristics (as deter-*  
 4        *mined by the State energy office) to, the residential*  
 5        *Energy Star product.*

6        (f) *AUTHORIZATION OF APPROPRIATIONS.—There are*  
 7        *authorized to be appropriated to the Secretary to carry out*  
 8        *this section \$50,000,000 for each of the fiscal years 2006*  
 9        *through 2010.*

10    **SEC. 125. ENERGY EFFICIENT PUBLIC BUILDINGS.**

11        (a) *GRANTS.—The Secretary of Energy may make*  
 12        *grants to the State agency responsible for developing State*  
 13        *energy conservation plans under section 362 of the Energy*  
 14        *Policy and Conservation Act (42 U.S.C. 6322), or, if no*  
 15        *such agency exists, a State agency designated by the Gov-*  
 16        *ernor of the State, to assist units of local government in*  
 17        *the State in improving the energy efficiency of public build-*  
 18        *ings and facilities—*

19                (1) *through construction of new energy efficient*  
 20        *public buildings that use at least 30 percent less en-*  
 21        *ergy than a comparable public building constructed*  
 22        *in compliance with standards prescribed in the most*  
 23        *recent version of the International Energy Conserva-*  
 24        *tion Code, or a similar State code intended to achieve*  
 25        *substantially equivalent efficiency levels; or*

1           (2) *through renovation of existing public build-*  
 2           *ings to achieve reductions in energy use of at least 30*  
 3           *percent as compared to the baseline energy use in*  
 4           *such buildings prior to renovation, assuming a 3-*  
 5           *year, weather-normalized average for calculating such*  
 6           *baseline.*

7           (b) *ADMINISTRATION.*—*State energy offices receiving*  
 8           *grants under this section shall—*

9                   (1) *maintain such records and evidence of com-*  
 10           *pliance as the Secretary may require; and*

11                   (2) *develop and distribute information and ma-*  
 12           *terials and conduct programs to provide technical*  
 13           *services and assistance to encourage planning, financ-*  
 14           *ing, and design of energy efficient public buildings by*  
 15           *units of local government.*

16           (c) *AUTHORIZATION OF APPROPRIATIONS.*—*For the*  
 17           *purposes of this section, there are authorized to be appro-*  
 18           *priated to the Secretary of Energy \$30,000,000 for each of*  
 19           *fiscal years 2006 through 2010. Not more than 10 percent*  
 20           *of appropriated funds shall be used for administration.*

21   **SEC. 126. LOW INCOME COMMUNITY ENERGY EFFICIENCY**  
 22                   **PILOT PROGRAM.**

23           (a) *GRANTS.*—*The Secretary of Energy is authorized*  
 24           *to make grants to units of local government, private, non-*  
 25           *profit community development organizations, and Indian*

1 *tribe economic development entities to improve energy effi-*  
2 *ciency; identify and develop alternative, renewable, and dis-*  
3 *tributed energy supplies; and increase energy conservation*  
4 *in low income rural and urban communities.*

5 (b) *PURPOSE OF GRANTS.*—*The Secretary may make*  
6 *grants on a competitive basis for—*

7 (1) *investments that develop alternative, renew-*  
8 *able, and distributed energy supplies;*

9 (2) *energy efficiency projects and energy con-*  
10 *servation programs;*

11 (3) *studies and other activities that improve en-*  
12 *ergy efficiency in low income rural and urban com-*  
13 *munities;*

14 (4) *planning and development assistance for in-*  
15 *creasing the energy efficiency of buildings and facili-*  
16 *ties; and*

17 (5) *technical and financial assistance to local*  
18 *government and private entities on developing new*  
19 *renewable and distributed sources of power or com-*  
20 *bined heat and power generation.*

21 (c) *DEFINITION.*—*For purposes of this section, the*  
22 *term “Indian tribe” means any Indian tribe, band, nation,*  
23 *or other organized group or community, including any*  
24 *Alaskan Native village or regional or village corporation*  
25 *as defined in or established pursuant to the Alaska Native*



1 *Claims Settlement Act (43 U.S.C. 1601 et seq.), that is rec-*  
 2 *ognized as eligible for the special programs and services*  
 3 *provided by the United States to Indians because of their*  
 4 *status as Indians.*

5 (d) *AUTHORIZATION OF APPROPRIATIONS.—For the*  
 6 *purposes of this section there are authorized to be appro-*  
 7 *priated to the Secretary of Energy \$20,000,000 for each of*  
 8 *fiscal years 2006 through 2008.*

9 ***Subtitle C—Energy Efficient***  
 10 ***Products***

11 ***SEC. 131. ENERGY STAR PROGRAM.***

12 (a) *AMENDMENT.—The Energy Policy and Conserva-*  
 13 *tion Act (42 U.S.C. 6201 et seq.) is amended by inserting*  
 14 *the following after section 324:*

15 ***“SEC. 324A. ENERGY STAR PROGRAM.***

16 *“There is established at the Department of Energy and*  
 17 *the Environmental Protection Agency a voluntary program*  
 18 *to identify and promote energy-efficient products and build-*  
 19 *ings in order to reduce energy consumption, improve energy*  
 20 *security, and reduce pollution through voluntary labeling*  
 21 *of or other forms of communication about products and*  
 22 *buildings that meet the highest energy efficiency standards.*  
 23 *Responsibilities under the program shall be divided between*  
 24 *the Department of Energy and the Environmental Protec-*

1 *tion Agency consistent with the terms of agreements between*  
2 *the 2 agencies. The Administrator and the Secretary shall—*

3 *“(1) promote Energy Star compliant technologies*  
4 *as the preferred technologies in the marketplace for*  
5 *achieving energy efficiency and to reduce pollution;*

6 *“(2) work to enhance public awareness of the*  
7 *Energy Star label, including special outreach to small*  
8 *businesses;*

9 *“(3) preserve the integrity of the Energy Star*  
10 *label;*

11 *“(4) solicit comments from interested parties*  
12 *prior to establishing or revising an Energy Star*  
13 *product category, specification, or criterion (or effec-*  
14 *tive dates for any of the foregoing);*

15 *“(5) upon adoption of a new or revised product*  
16 *category, specification, or criterion, provide reason-*  
17 *able notice to interested parties of any changes (in-*  
18 *cluding effective dates) in product categories, speci-*  
19 *fications, or criteria along with an explanation of*  
20 *such changes and, where appropriate, responses to*  
21 *comments submitted by interested parties; and*

22 *“(6) provide appropriate lead time (which shall*  
23 *be 9 months, unless the Agency or Department deter-*  
24 *mines otherwise) prior to the effective date for a new*  
25 *or a significant revision to a product category, speci-*

1        *fication, or criterion, taking into account the timing*  
 2        *requirements of the manufacturing, product mar-*  
 3        *keting, and distribution process for the specific prod-*  
 4        *uct addressed.”.*

5        *(b) TABLE OF CONTENTS AMENDMENT.—The table of*  
 6        *contents of the Energy Policy and Conservation Act is*  
 7        *amended by inserting after the item relating to section 324*  
 8        *the following new item:*

*“Sec. 324A. Energy Star program.”.*

9        **SEC. 132. HVAC MAINTENANCE CONSUMER EDUCATION**  
 10        **PROGRAM.**

11        *Section 337 of the Energy Policy and Conservation Act*  
 12        *(42 U.S.C. 6307) is amended by adding at the end the fol-*  
 13        *lowing:*

14        *“(c) HVAC MAINTENANCE.—For the purpose of ensur-*  
 15        *ing that installed air conditioning and heating systems op-*  
 16        *erate at their maximum rated efficiency levels, the Sec-*  
 17        *retary shall, not later than 180 days after the date of enact-*  
 18        *ment of this subsection, carry out a program to educate*  
 19        *homeowners and small business owners concerning the en-*  
 20        *ergy savings resulting from properly conducted mainte-*  
 21        *nance of air conditioning, heating, and ventilating systems.*  
 22        *The Secretary shall carry out the program in a cost-shared*  
 23        *manner in cooperation with the Administrator of the Envi-*  
 24        *ronmental Protection Agency and such other entities as the*  
 25        *Secretary considers appropriate, including industry trade*

1 associations, industry members, and energy efficiency orga-  
 2 nizations.

3 “(d) *SMALL BUSINESS EDUCATION AND ASSIST-*  
 4 *ANCE.*—*The Administrator of the Small Business Adminis-*  
 5 *tration, in consultation with the Secretary of Energy and*  
 6 *the Administrator of the Environmental Protection Agency,*  
 7 *shall develop and coordinate a Government-wide program,*  
 8 *building on the existing Energy Star for Small Business*  
 9 *Program, to assist small businesses to become more energy*  
 10 *efficient, understand the cost savings obtainable through ef-*  
 11 *ficiencies, and identify financing options for energy effi-*  
 12 *ciency upgrades. The Secretary and the Administrator of*  
 13 *the Small Business Administration shall make the program*  
 14 *information available directly to small businesses and*  
 15 *through other Federal agencies, including the Federal*  
 16 *Emergency Management Program and the Department of*  
 17 *Agriculture.”.*

18 **SEC. 133. ENERGY CONSERVATION STANDARDS FOR ADDI-**  
 19 **TIONAL PRODUCTS.**

20 (a) *DEFINITIONS.*—*Section 321 of the Energy Policy*  
 21 *and Conservation Act (42 U.S.C. 6291) is amended—*

22 (1) *in paragraph (30)(S), by striking the period*  
 23 *and adding at the end the following: “but does not in-*  
 24 *clude any lamp specifically designed to be used for*  
 25 *special purpose applications and that is unlikely to*

1       *be used in general purpose applications such as those*  
2       *described in subparagraph (D), and also does not in-*  
3       *clude any lamp not described in subparagraph (D)*  
4       *that is excluded by the Secretary, by rule, because the*  
5       *lamp is designed for special applications and is un-*  
6       *likely to be used in general purpose applications.”;*  
7       *and*

8               *(2) by adding at the end the following:*

9               *“(32) The term ‘battery charger’ means a device*  
10       *that charges batteries for consumer products and in-*  
11       *cludes battery chargers embedded in other consumer*  
12       *products.*

13              *“(33) The term ‘commercial refrigerators, freez-*  
14       *ers, and refrigerator-freezers’ means refrigerators,*  
15       *freezers, or refrigerator-freezers that—*

16              *“(A) are not consumer products regulated*  
17       *under this Act; and*

18              *“(B) incorporate most components involved*  
19       *in the vapor-compression cycle and the refriger-*  
20       *erated compartment in a single package.*

21              *“(34) The term ‘external power supply’ means*  
22       *an external power supply circuit that is used to con-*  
23       *vert household electric current into either DC current*  
24       *or lower-voltage AC current to operate a consumer*  
25       *product.*

1           “(35) *The term ‘illuminated exit sign’ means a*  
2           *sign that—*

3                   “(A) *is designed to be permanently fixed in*  
4                   *place to identify an exit; and*

5                   “(B) *consists of an electrically powered in-*  
6                   *tegral light source that illuminates the legend*  
7                   *‘EXIT’ and any directional indicators and pro-*  
8                   *vides contrast between the legend, any direc-*  
9                   *tional indicators, and the background.*

10           “(36)(A) *Except as provided in subparagraph*  
11           *(B), the term ‘distribution transformer’ means a*  
12           *transformer that—*

13                   “(i) *has an input voltage of 34.5 kilovolts or*  
14                   *less;*

15                   “(ii) *has an output voltage of 600 volts or*  
16                   *less; and*

17                   “(iii) *is rated for operation at a frequency*  
18                   *of 60 Hertz.*

19           “(B) *The term ‘distribution transformer’ does*  
20           *not include—*

21                   “(i) *transformers with multiple voltage*  
22                   *taps, with the highest voltage tap equaling at*  
23                   *least 20 percent more than the lowest voltage tap;*

24                   “(ii) *transformers, such as those commonly*  
25                   *known as drive transformers, rectifier trans-*

1        *formers, auto-transformers, Uninterruptible*  
 2        *Power System transformers, impedance trans-*  
 3        *formers, regulating transformers, sealed and non-*  
 4        *ventilating transformers, machine tool trans-*  
 5        *formers, welding transformers, grounding trans-*  
 6        *formers, or testing transformers, that are de-*  
 7        *signed to be used in a special purpose applica-*  
 8        *tion and are unlikely to be used in general pur-*  
 9        *pose applications; or*

10            *“(iii) any transformer not listed in clause*  
 11            *(ii) that is excluded by the Secretary by rule be-*  
 12            *cause—*

13                    *“(I) the transformer is designed for a*  
 14                    *special application;*

15                    *“(II) the transformer is unlikely to be*  
 16                    *used in general purpose applications; and*

17                    *“(III) the application of standards to*  
 18                    *the transformer would not result in signifi-*  
 19                    *cant energy savings.*

20            *“(37) The term ‘low-voltage dry-type distribution*  
 21            *transformer’ means a distribution transformer that—*

22                    *“(A) has an input voltage of 600 volts or*  
 23                    *less;*

24                    *“(B) is air-cooled; and*

25                    *“(C) does not use oil as a coolant.*

1           “(38) *The term ‘standby mode’ means the lowest*  
2           *power consumption mode that—*

3                     “(A) *cannot be switched off or influenced by*  
4           *the user; and*

5                     “(B) *may persist for an indefinite time*  
6           *when an appliance is connected to the main elec-*  
7           *tricity supply and used in accordance with the*  
8           *manufacturer’s instructions,*  
9           *as defined on an individual product basis by the Sec-*  
10          *retary.*

11           “(39) *The term ‘torchiere’ means a portable elec-*  
12          *tric lamp with a reflector bowl that directs light up-*  
13          *ward so as to give indirect illumination.*

14           “(40) *The term ‘traffic signal module’ means a*  
15          *standard 8-inch (200mm) or 12-inch (300mm) traffic*  
16          *signal indication, consisting of a light source, a lens,*  
17          *and all other parts necessary for operation, that com-*  
18          *municates movement messages to drivers through red,*  
19          *amber, and green colors.*

20           “(41) *The term ‘transformer’ means a device*  
21          *consisting of 2 or more coils of insulated wire that*  
22          *transfers alternating current by electromagnetic in-*  
23          *duction from 1 coil to another to change the original*  
24          *voltage or current value.*



1           “(42) *The term ‘unit heater’ means a self-con-*  
2           *tained fan-type heater designed to be installed within*  
3           *the heated space, except that such term does not in-*  
4           *clude a warm air furnace.*

5           “(43) *The term ‘ceiling fan’ means a non-port-*  
6           *able device that is suspended from a ceiling for circu-*  
7           *lating air via the rotation of fan blades.*

8           “(44) *The term ‘ceiling fan light kit’ means*  
9           *equipment designed to provide light from a ceiling*  
10          *fan which can be—*

11               “(A) *integral, such that the equipment is*  
12               *attached to the ceiling fan prior to the time of*  
13               *retail sale; or*

14               “(B) *attachable, such that at the time of re-*  
15               *tail sale the equipment is not physically attached*  
16               *to the ceiling fan, but may be included inside the*  
17               *ceiling fan package at the time of sale or sold*  
18               *separately for subsequent attachment to the*  
19               *fan.”.*

20          (b) *TEST PROCEDURES.—Section 323 of the Energy*  
21          *Policy and Conservation Act (42 U.S.C. 6293) is amend-*  
22          *ed—*

23               (1) *in subsection (b), by adding at the end the*  
24          *following:*

1       “(9) *Test procedures for illuminated exit signs shall*  
2 *be based on the test method used under Version 2.0 of the*  
3 *Energy Star program of the Environmental Protection*  
4 *Agency for illuminated exit signs.*

5       “(10) *Test procedures for distribution transformers*  
6 *and low voltage dry-type distribution transformers shall be*  
7 *based on the ‘Standard Test Method for Measuring the En-*  
8 *ergy Consumption of Distribution Transformers’ prescribed*  
9 *by the National Electrical Manufacturers Association*  
10 *(NEMA TP 2–1998). The Secretary may review and revise*  
11 *this test procedure. For purposes of section 346(a), this test*  
12 *procedure shall be deemed to be testing requirements pre-*  
13 *scribed by the Secretary under section 346(a)(1) for dis-*  
14 *tribution transformers for which the Secretary makes a de-*  
15 *termination that energy conservation standards would be*  
16 *technologically feasible and economically justified, and*  
17 *would result in significant energy savings.*

18       “(11) *Test procedures for traffic signal modules shall*  
19 *be based on the test method used under the Energy Star*  
20 *program of the Environmental Protection Agency for traffic*  
21 *signal modules, as in effect on the date of enactment of this*  
22 *paragraph.*

23       “(12) *Test procedures for medium base compact fluo-*  
24 *rescent lamps shall be based on the test methods used under*  
25 *the August 9, 2001, version of the Energy Star program*

1 of the Environmental Protection Agency and Department  
2 of Energy for compact fluorescent lamps. Covered products  
3 shall meet all test requirements for regulated parameters in  
4 section 325(bb). However, covered products may be mar-  
5 keted prior to completion of lamp life and lumen mainte-  
6 nance at 40 percent of rated life testing provided manufac-  
7 turers document engineering predictions and analysis that  
8 support expected attainment of lumen maintenance at 40  
9 percent rated life and lamp life time.

10 “(13) The Secretary shall, not later than 18 months  
11 after the date of enactment of this paragraph, prescribe test-  
12 ing requirements for ceiling fans and ceiling fan light  
13 kits.”; and

14 (2) by adding at the end the following:

15 “(f) *ADDITIONAL CONSUMER AND COMMERCIAL PROD-*  
16 *UCTS.—The Secretary shall, not later than 24 months after*  
17 *the date of enactment of this subsection, prescribe testing*  
18 *requirements for suspended ceiling fans, refrigerated bottled*  
19 *or canned beverage vending machines, and commercial re-*  
20 *frigerators, freezers, and refrigerator-freezers. Such testing*  
21 *requirements shall be based on existing test procedures used*  
22 *in industry to the extent practical and reasonable. In the*  
23 *case of suspended ceiling fans, such test procedures shall in-*  
24 *clude efficiency at both maximum output and at an output*  
25 *no more than 50 percent of the maximum output.”.*

1       (c) *NEW STANDARDS.*—Section 325 of the *Energy Pol-*  
2   *icy and Conservation Act* (42 U.S.C. 6295) is amended by  
3   *adding at the end the following:*

4       “(u) *BATTERY CHARGER AND EXTERNAL POWER SUP-*  
5   *PLY ELECTRIC ENERGY CONSUMPTION.*—

6               “(1) *INITIAL RULEMAKING.*—(A) *The Secretary*  
7   *shall, within 18 months after the date of enactment*  
8   *of this subsection, prescribe by notice and comment,*  
9   *definitions and test procedures for the power use of*  
10   *battery chargers and external power supplies. In es-*  
11   *tablishing these test procedures, the Secretary shall*  
12   *consider, among other factors, existing definitions and*  
13   *test procedures used for measuring energy consump-*  
14   *tion in standby mode and other modes and assess the*  
15   *current and projected future market for battery char-*  
16   *gers and external power supplies. This assessment*  
17   *shall include estimates of the significance of potential*  
18   *energy savings from technical improvements to these*  
19   *products and suggested product classes for standards.*  
20   *Prior to the end of this time period, the Secretary*  
21   *shall hold a scoping workshop to discuss and receive*  
22   *comments on plans for developing energy conservation*  
23   *standards for energy use for these products.*

24               “(B) *The Secretary shall, within 3 years after*  
25   *the date of enactment of this subsection, issue a final*

1 rule that determines whether energy conservation  
2 standards shall be issued for battery chargers and ex-  
3 ternal power supplies or classes thereof. For each  
4 product class, any such standards shall be set at the  
5 lowest level of energy use that—

6 “(i) meets the criteria and procedures of  
7 subsections (o), (p), (q), (r), (s), and (t); and

8 “(ii) will result in significant overall an-  
9 nual energy savings, considering both standby  
10 mode and other operating modes.

11 “(2) *REVIEW OF STANDBY ENERGY USE IN COV-*  
12 *ERED PRODUCTS.*—In determining pursuant to sec-  
13 tion 323 whether test procedures and energy conserva-  
14 tion standards pursuant to this section should be re-  
15 vised, the Secretary shall consider, for covered prod-  
16 ucts that are major sources of standby mode energy  
17 consumption, whether to incorporate standby mode  
18 into such test procedures and energy conservation  
19 standards, taking into account, among other relevant  
20 factors, standby mode power consumption compared  
21 to overall product energy consumption.

22 “(3) *RULEMAKING.*—The Secretary shall not  
23 propose a standard under this section unless the Sec-  
24 retary has issued applicable test procedures for each  
25 product pursuant to section 323.

1           “(4) *EFFECTIVE DATE*.—Any standard issued  
2           under this subsection shall be applicable to products  
3           manufactured or imported 3 years after the date of  
4           issuance.

5           “(5) *VOLUNTARY PROGRAMS*.—The Secretary  
6           and the Administrator shall collaborate and develop  
7           programs, including programs pursuant to section  
8           324A (relating to Energy Star Programs) and other  
9           voluntary industry agreements or codes of conduct,  
10          that are designed to reduce standby mode energy use.

11          “(v) *SUSPENDED CEILING FANS, VENDING MACHINES,*  
12 *AND COMMERCIAL REFRIGERATORS, FREEZERS, AND RE-*  
13 *FRIGERATOR-FREEZERS*.—The Secretary shall not later  
14 than 36 months after the date on which testing requirements  
15 are prescribed by the Secretary pursuant to section 323(f),  
16 prescribe, by rule, energy conservation standards for sus-  
17 pended ceiling fans, refrigerated bottled or canned beverage  
18 vending machines, and commercial refrigerators, freezers,  
19 and refrigerator-freezers. In establishing standards under  
20 this subsection, the Secretary shall use the criteria and pro-  
21 cedures contained in subsections (o) and (p). Any standard  
22 prescribed under this subsection shall apply to products  
23 manufactured 3 years after the date of publication of a final  
24 rule establishing such standard.

1       “(w) *ILLUMINATED EXIT SIGNS.*—*Illuminated exit*  
 2 *signs manufactured on or after January 1, 2006, shall meet*  
 3 *the Version 2.0 Energy Star Program performance require-*  
 4 *ments for illuminated exit signs prescribed by the Environ-*  
 5 *mental Protection Agency.*

6       “(x) *TORCHIERES.*—*Torchieres manufactured on or*  
 7 *after January 1, 2006—*

8               “(1) *shall consume not more than 190 watts of*  
 9 *power; and*

10              “(2) *shall not be capable of operating with lamps*  
 11 *that total more than 190 watts.*

12       “(y) *LOW VOLTAGE DRY-TYPE DISTRIBUTION TRANS-*  
 13 *FORMERS.*—*The efficiency of low voltage dry-type distribu-*  
 14 *tion transformers manufactured on or after January 1,*  
 15 *2006, shall be the Class I Efficiency Levels for distribution*  
 16 *transformers specified in Table 4–2 of the ‘Guide for Deter-*  
 17 *mining Energy Efficiency for Distribution Transformers’*  
 18 *published by the National Electrical Manufacturers Asso-*  
 19 *ciation (NEMA TP–1–2002).*

20       “(z) *TRAFFIC SIGNAL MODULES.*—*Traffic signal mod-*  
 21 *ules manufactured on or after January 1, 2006, shall meet*  
 22 *the performance requirements used under the Energy Star*  
 23 *program of the Environmental Protection Agency for traffic*  
 24 *signals, as in effect on the date of enactment of this sub-*  
 25 *section, and shall be installed with compatible, electrically*

1 *connected signal control interface devices and conflict moni-*  
2 *toring systems.*

3       “(aa) *UNIT HEATERS.*—Unit heaters manufactured on  
4 *or after the date that is 3 years after the date of enactment*  
5 *of this subsection shall be equipped with an intermittent*  
6 *ignition device and shall have either power venting or an*  
7 *automatic flue damper.*

8       “(bb) *MEDIUM BASE COMPACT FLUORESCENT*  
9 *LAMPS.*—Bare lamp and covered lamp (no reflector) me-  
10 *dium base compact fluorescent lamps manufactured on or*  
11 *after January 1, 2006, shall meet the following require-*  
12 *ments prescribed by the August 9, 2001, version of the En-*  
13 *ergy Star Program Requirements for Compact Fluorescent*  
14 *Lamps, Energy Star Eligibility Criteria, Energy-Effi-*  
15 *ciency Specification issued by the Environmental Protec-*  
16 *tion Agency and Department of Energy: minimum initial*  
17 *efficacy; lumen maintenance at 1000 hours; lumen mainte-*  
18 *nance at 40 percent of rated life; rapid cycle stress test;*  
19 *and lamp life. The Secretary may, by rule, establish re-*  
20 *quirements for color quality (CRI); power factor; operating*  
21 *frequency; and maximum allowable start time based on the*  
22 *requirements prescribed by the August 9, 2001, version of*  
23 *the Energy Star Program Requirements for Compact Fluo-*  
24 *rescent Lamps. The Secretary may, by rule, revise these re-*



1 *quirements or establish other requirements considering en-*  
 2 *ergy savings, cost effectiveness, and consumer satisfaction.*

3 “(cc) *EFFECTIVE DATE.*—*Section 327 shall apply—*

4 “(1) *to products for which standards are to be es-*  
 5 *tablished under subsections (u) and (v) on the date on*  
 6 *which a final rule is issued by the Department of En-*  
 7 *ergy, except that any State or local standards pre-*  
 8 *scribed or enacted for any such product prior to the*  
 9 *date on which such final rule is issued shall not be*  
 10 *preempted until the standard established under sub-*  
 11 *section (u) or (v) for that product takes effect; and*

12 “(2) *to products for which standards are estab-*  
 13 *lished under subsections (w) through (bb) on the date*  
 14 *of enactment of those subsections, except that any*  
 15 *State or local standards prescribed or enacted prior*  
 16 *to the date of enactment of those subsections shall not*  
 17 *be preempted until the standards established under*  
 18 *subsections (w) through (bb) take effect.*

19 “(dd) *CEILING FANS.*—

20 “(1) *FEATURES.*—*All ceiling fans manufactured*  
 21 *on or after January 1, 2006, shall have the following*  
 22 *features:*

23 “(A) *Lighting controls operate independ-*  
 24 *ently from fan speed controls.*

1           “(B) *Adjustable speed controls (either more*  
 2           *than 1 speed or variable speed).*

3           “(C) *The capability of reversible fan action,*  
 4           *except for fans sold for industrial applications,*  
 5           *outdoor applications, and where safety standards*  
 6           *would be violated by the use of the reversible*  
 7           *mode. The Secretary may promulgate regulations*  
 8           *to define in greater detail the exceptions pro-*  
 9           *vided under this subparagraph but may not sub-*  
 10           *stantively expand the exceptions.*

11           “(2) *REVISED STANDARDS.—*

12           “(A) *IN GENERAL.—Notwithstanding any*  
 13           *provision of this Act, if the requirements of sub-*  
 14           *sections (o) and (p) are met, the Secretary may*  
 15           *consider and prescribe energy efficiency or en-*  
 16           *ergy use standards for electricity used by ceiling*  
 17           *fans to circulate air in a room.*

18           “(B) *SPECIAL CONSIDERATION.—If the Sec-*  
 19           *retary sets such standards, the Secretary shall*  
 20           *consider—*

21           “(i) *exempting or setting different*  
 22           *standards for certain product classes for*  
 23           *which the primary standards are not tech-*  
 24           *nically feasible or economically justified;*  
 25           *and*

1                   “(ii) *establishing separate exempted*  
 2                   *product classes for highly decorative fans for*  
 3                   *which air movement performance is a sec-*  
 4                   *ondary design feature.*

5                   “(C) *APPLICATION.—Any air movement*  
 6                   *standard prescribed under this subsection shall*  
 7                   *apply to products manufactured on or after the*  
 8                   *date that is 3 years after the date of publication*  
 9                   *of a final rule establishing the standard.”.*

10           (d) *RESIDENTIAL FURNACE FANS.—Section 325(f)(3)*  
 11           *of the Energy Policy and Conservation Act (42 U.S.C.*  
 12           *6295(f)(3)) is amended by adding the following new sub-*  
 13           *paragraph at the end:*

14           “(D) *Notwithstanding any provision of this Act, the*  
 15           *Secretary may consider, and prescribe, if the requirements*  
 16           *of subsection (o) of this section are met, energy efficiency*  
 17           *or energy use standards for electricity used for purposes of*  
 18           *circulating air through duct work.”.*

19   **SEC. 134. ENERGY LABELING.**

20           (a) *RULEMAKING ON EFFECTIVENESS OF CONSUMER*  
 21           *PRODUCT LABELING.—Section 324(a)(2) of the Energy Pol-*  
 22           *icy and Conservation Act (42 U.S.C. 6294(a)(2)) is amend-*  
 23           *ed by adding at the end the following:*

24           “(F) *Not later than 3 months after the date of enact-*  
 25           *ment of this subparagraph, the Commission shall initiate*

1 *a rulemaking to consider the effectiveness of the current con-*  
 2 *sumer products labeling program in assisting consumers in*  
 3 *making purchasing decisions and improving energy effi-*  
 4 *ciency and to consider changes to the labeling rules that*  
 5 *would improve the effectiveness of consumer product labels.*  
 6 *Such rulemaking shall be completed not later than 2 years*  
 7 *after the date of enactment of this subparagraph.*

8       “(G)(i) *Not later than 18 months after date of enact-*  
 9 *ment of this subparagraph, the Commission shall prescribe*  
 10 *by rule, pursuant to this section, labeling requirements for*  
 11 *the electricity used by ceiling fans to circulate air in a*  
 12 *room.*

13       “(ii) *The rule prescribed under clause (i) shall apply*  
 14 *to products manufactured after the later of—*

15               “(I) *January 1, 2009; or*

16               “(II) *the date that is 60 days after the final rule*  
 17 *is prescribed.”.*

18       (b) *RULEMAKING ON LABELING FOR ADDITIONAL*  
 19 *PRODUCTS.—Section 324(a) of the Energy Policy and Con-*  
 20 *servation Act (42 U.S.C. 6294(a)) is further amended by*  
 21 *adding at the end the following:*

22       “(5) *The Secretary or the Commission, as appropriate,*  
 23 *may, for covered products referred to in subsections (u)*  
 24 *through (aa) of section 325, prescribe, by rule, pursuant to*  
 25 *this section, labeling requirements for such products after*

1 a test procedure has been set pursuant to section 323. In  
 2 the case of products to which TP–1 standards under section  
 3 325(y) apply, labeling requirements shall be based on the  
 4 ‘Standard for the Labeling of Distribution Transformer Ef-  
 5 ficiency’ prescribed by the National Electrical Manufactur-  
 6 ers Association (NEMA TP–3) as in effect upon the date  
 7 of enactment of this paragraph.”.

8 **SEC. 135. PREEMPTION.**

9 Section 327 of the Energy Policy and Conservation Act  
 10 (42 U.S.C. 6297) is amended by adding at the end the fol-  
 11 lowing:

12 “(h) CEILING FANS.—Effective on January 1, 2006,  
 13 this section shall apply to and supersede all State and local  
 14 standards prescribed or enacted for ceiling fans and ceiling  
 15 fan light kits.”.

16 **SEC. 136. STATE CONSUMER PRODUCT ENERGY EFFICIENCY**  
 17 **STANDARDS.**

18 Section 327 of the Energy Policy and Conservation Act  
 19 (42 U.S.C. 6297) is amended by adding at the end the fol-  
 20 lowing new subsection:

21 “(h) LIMITATION ON PREEMPTION.—Subsections (a)  
 22 and (b) shall not apply with respect to State regulation  
 23 of energy consumption or water use of any covered product  
 24 during any period of time—

1           “(1) after the date which is 3 years after a Fed-  
 2           eral standard is required by law to be established or  
 3           revised, but has not been established or revised; and

4           “(2) before the date on which such Federal stand-  
 5           ard is established or revised.”.

## 6           ***Subtitle D—Public Housing***

### 7   ***SEC. 145. GRANTS FOR ENERGY-CONSERVING IMPROVE-*** 8           ***MENTS FOR ASSISTED HOUSING.***

9           Section 251(b)(1) of the National Energy Conservation  
 10          Policy Act (42 U.S.C. 8231(1)) is amended—

11           (1) by striking “financed with loans” and insert-  
 12           ing “assisted”;

13           (2) by inserting after “1959,” the following:  
 14           “which are eligible multifamily housing projects (as  
 15           such term is defined in section 512 of the Multifamily  
 16           Assisted Housing Reform and Affordability Act of  
 17           1997 (42 U.S.C. 1437f note)) and are subject to mort-  
 18           gage restructuring and rental assistance sufficiency  
 19           plans under such Act,”; and

20           (3) by inserting after the period at the end of the  
 21           first sentence the following new sentence: “Such im-  
 22           provements may also include the installation of en-  
 23           ergy and water conserving fixtures and fittings that  
 24           conform to the American Society of Mechanical Engi-  
 25           neers/American National Standards Institute stand-

1        *ards A112.19.2–1998 and A112.18.1–2000, or any re-*  
2        *vision thereto, applicable at the time of installation.”.*

3    **SEC. 147. ENERGY-EFFICIENT APPLIANCES.**

4        *In purchasing appliances, a public housing agency*  
5        *shall purchase energy-efficient appliances that are Energy*  
6        *Star products or FEMP-designated products, as such terms*  
7        *are defined in section 553 of the National Energy Conserva-*  
8        *tion Policy Act (as amended by this title), unless the pur-*  
9        *chase of energy-efficient appliances is not cost-effective to*  
10       *the agency.*

11    **SEC. 149. ENERGY STRATEGY FOR HUD.**

12       *The Secretary of Housing and Urban Development*  
13       *shall develop and implement an integrated strategy to re-*  
14       *duce utility expenses through cost-effective energy conserva-*  
15       *tion and efficiency measures and energy efficient design*  
16       *and construction of public and assisted housing. The energy*  
17       *strategy shall include the development of energy reduction*  
18       *goals and incentives for public housing agencies. The Sec-*  
19       *retary shall submit a report to Congress, not later than 1*  
20       *year after the date of the enactment of this Act, on the en-*  
21       *ergy strategy and the actions taken by the Department of*  
22       *Housing and Urban Development to monitor the energy*  
23       *usage of public housing agencies and shall submit an up-*  
24       *date every 2 years thereafter on progress in implementing*  
25       *the strategy.*

1     ***TITLE II—RENEWABLE ENERGY***

2     ***Subtitle A—General Provisions***

3     ***SEC. 201. ASSESSMENT OF RENEWABLE ENERGY RE-***  
 4                 ***SOURCES.***

5         (a) *RESOURCE ASSESSMENT.*—Not later than 6  
 6         months after the date of enactment of this Act, and each  
 7         year thereafter, the Secretary of Energy shall review the  
 8         available assessments of renewable energy resources within  
 9         the United States, including solar, wind, biomass, ocean  
 10        (tidal, wave, current, and thermal), geothermal, and hydro-  
 11        electric energy resources, and undertake new assessments as  
 12        necessary, taking into account changes in market condi-  
 13        tions, available technologies, and other relevant factors.

14       (b) *CONTENTS OF REPORTS.*—Not later than 1 year  
 15       after the date of enactment of this Act, and each year there-  
 16       after, the Secretary shall publish a report based on the as-  
 17       sessment under subsection (a). The report shall contain—

18               (1) *a detailed inventory describing the available*  
 19               *amount and characteristics of the renewable energy*  
 20               *resources; and*

21               (2) *such other information as the Secretary be-*  
 22               *lieves would be useful in developing such renewable*  
 23               *energy resources, including descriptions of sur-*  
 24               *rounding terrain, population and load centers, near-*  
 25               *by energy infrastructure, location of energy and water*



1       resources, and available estimates of the costs needed  
2       to develop each resource, together with an identifica-  
3       tion of any barriers to providing adequate trans-  
4       mission for remote sources of renewable energy re-  
5       sources to current and emerging markets, rec-  
6       ommendations for removing or addressing such bar-  
7       riers, and ways to provide access to the grid that do  
8       not unfairly disadvantage renewable or other energy  
9       producers.

10       (c) *AUTHORIZATION OF APPROPRIATIONS.*—For the  
11       purposes of this section, there are authorized to be appro-  
12       priated to the Secretary of Energy \$10,000,000 for each of  
13       fiscal years 2006 through 2010.

14       **SEC. 202. RENEWABLE ENERGY PRODUCTION INCENTIVE.**

15       (a) *INCENTIVE PAYMENTS.*—Section 1212(a) of the  
16       Energy Policy Act of 1992 (42 U.S.C. 13317(a)) is amended  
17       by striking “and which satisfies” and all that follows  
18       through “Secretary shall establish.” and inserting “. If there  
19       are insufficient appropriations to make full payments for  
20       electric production from all qualified renewable energy fa-  
21       cilities in any given year, the Secretary shall assign 60 per-  
22       cent of appropriated funds for that year to facilities that  
23       use solar, wind, geothermal, or closed-loop (dedicated energy  
24       crops) biomass technologies to generate electricity, and as-  
25       sign the remaining 40 percent to other projects. The Sec-

1 *retary may, after transmitting to Congress an explanation*  
 2 *of the reasons therefor, alter the percentage requirements of*  
 3 *the preceding sentence.”.*

4 *(b) QUALIFIED RENEWABLE ENERGY FACILITY.—Sec-*  
 5 *tion 1212(b) of the Energy Policy Act of 1992 (42 U.S.C.*  
 6 *13317(b)) is amended—*

7 *(1) by striking “a State or any political” and*  
 8 *all that follows through “nonprofit electrical coopera-*  
 9 *tive” and inserting “a not-for-profit electric coopera-*  
 10 *tive, a public utility described in section 115 of the*  
 11 *Internal Revenue Code of 1986, a State, Common-*  
 12 *wealth, territory, or possession of the United States or*  
 13 *the District of Columbia, or a political subdivision*  
 14 *thereof, or an Indian tribal government or subdivi-*  
 15 *sion thereof,”; and*

16 *(2) by inserting “landfill gas, livestock methane,*  
 17 *ocean (tidal, wave, current, and thermal),” after*  
 18 *“wind, biomass,”.*

19 *(c) ELIGIBILITY WINDOW.—Section 1212(c) of the En-*  
 20 *ergy Policy Act of 1992 (42 U.S.C. 13317(c)) is amended*  
 21 *by striking “during the 10-fiscal year period beginning*  
 22 *with the first full fiscal year occurring after the enactment*  
 23 *of this section” and inserting “after October 1, 2005, and*  
 24 *before October 1, 2015”.*

1       (d) *AMOUNT OF PAYMENT.*—Section 1212(e)(1) of the  
 2 *Energy Policy Act of 1992* (42 U.S.C. 13317(e)(1)) is  
 3 amended by inserting “landfill gas, livestock methane,  
 4 ocean (tidal, wave, current, and thermal),” after “wind,  
 5 biomass,”.

6       (e) *SUNSET.*—Section 1212(f) of the *Energy Policy Act*  
 7 of 1992 (42 U.S.C. 13317(f)) is amended by striking “the  
 8 expiration of” and all that follows through “of this section”  
 9 and inserting “September 30, 2025”.

10       (f) *AUTHORIZATION OF APPROPRIATIONS.*—Section  
 11 1212(g) of the *Energy Policy Act of 1992* (42 U.S.C.  
 12 13317(g)) is amended to read as follows:

13       “(g) *AUTHORIZATION OF APPROPRIATIONS.*—

14               “(1) *IN GENERAL.*—Subject to paragraph (2),  
 15 there are authorized to be appropriated such sums as  
 16 may be necessary to carry out this section for fiscal  
 17 years 2005 through 2025.

18               “(2) *AVAILABILITY OF FUNDS.*—Funds made  
 19 available under paragraph (1) shall remain available  
 20 until expended.”.

21 **SEC. 203. FEDERAL PURCHASE REQUIREMENT.**

22       (a) *REQUIREMENT.*—The President, acting through the  
 23 Secretary of Energy, shall seek to ensure that, to the extent  
 24 economically feasible and technically practicable, of the  
 25 total amount of electric energy the Federal Government con-

1 *sumes during any fiscal year, the following amounts shall*  
2 *be renewable energy:*

3 *(1) Not less than 3 percent in fiscal years 2007*  
4 *through 2009.*

5 *(2) Not less than 5 percent in fiscal years 2010*  
6 *through 2012.*

7 *(3) Not less than 7.5 percent in fiscal year 2013*  
8 *and each fiscal year thereafter.*

9 *(b) DEFINITIONS.—In this section:*

10 *(1) BIOMASS.—The term “biomass” means any*  
11 *solid, nonhazardous, cellulosic material that is de-*  
12 *rived from—*

13 *(A) any of the following forest-related re-*  
14 *sources: mill residues, precommercial thinnings,*  
15 *slash, and brush, or nonmerchantable material;*

16 *(B) solid wood waste materials, including*  
17 *waste pallets, crates, dunnage, manufacturing*  
18 *and construction wood wastes (other than pres-*  
19 *sure-treated, chemically-treated, or painted wood*  
20 *wastes), and landscape or right-of-way tree trim-*  
21 *dings, but not including municipal solid waste*  
22 *(garbage), gas derived from the biodegradation of*  
23 *solid waste, or paper that is commonly recycled;*

24 *(C) agriculture wastes, including orchard*  
25 *tree crops, vineyard, grain, legumes, sugar, and*

1           *other crop by-products or residues, and livestock*  
2           *waste nutrients; or*

3           *(D) a plant that is grown exclusively as a*  
4           *fuel for the production of electricity.*

5           (2) *RENEWABLE ENERGY.*—*The term “renewable*  
6           *energy” means electric energy generated from solar,*  
7           *wind, biomass, landfill gas, ocean (tidal, wave, cur-*  
8           *rent, and thermal), geothermal, municipal solid*  
9           *waste, or new hydroelectric generation capacity*  
10          *achieved from increased efficiency or additions of new*  
11          *capacity at an existing hydroelectric project.*

12          (c) *CALCULATION.*—*For purposes of determining com-*  
13          *pliance with the requirement of this section, the amount of*  
14          *renewable energy shall be doubled if—*

15                (1) *the renewable energy is produced and used*  
16                *on-site at a Federal facility;*

17                (2) *the renewable energy is produced on Federal*  
18                *lands and used at a Federal facility; or*

19                (3) *the renewable energy is produced on Indian*  
20                *land as defined in title XXVI of the Energy Policy*  
21                *Act of 1992 (25 U.S.C. 3501 et. seq.) and used at a*  
22                *Federal facility.*

23          (d) *REPORT.*—*Not later than April 15, 2007, and*  
24          *every 2 years thereafter, the Secretary of Energy shall pro-*

1 *vide a report to Congress on the progress of the Federal Gov-*  
2 *ernment in meeting the goals established by this section.*

3 **SEC. 204. INSULAR AREAS ENERGY SECURITY.**

4 *Section 604 of the Act entitled “An Act to authorize*  
5 *appropriations for certain insular areas of the United*  
6 *States, and for other purposes”, approved December 24,*  
7 *1980 (48 U.S.C. 1492), is amended—*

8 *(1) in subsection (a)(4) by striking the period*  
9 *and inserting a semicolon;*

10 *(2) by adding at the end of subsection (a) the fol-*  
11 *lowing new paragraphs:*

12 *“(5) electric power transmission and distribution*  
13 *lines in insular areas are inadequate to withstand*  
14 *damage caused by the hurricanes and typhoons which*  
15 *frequently occur in insular areas and such damage*  
16 *often costs millions of dollars to repair; and*

17 *“(6) the refinement of renewable energy tech-*  
18 *nologies since the publication of the 1982 Territorial*  
19 *Energy Assessment prepared pursuant to subsection*  
20 *(c) reveals the need to reassess the state of energy pro-*  
21 *duction, consumption, infrastructure, reliance on im-*  
22 *ported energy, opportunities for energy conservation*  
23 *and increased energy efficiency, and indigenous*  
24 *sources in regard to the insular areas.”;*

1           (3) *by amending subsection (e) to read as fol-*  
2       *lows:*

3           “(e)(1) *The Secretary of the Interior, in consultation*  
4       *with the Secretary of Energy and the head of government*  
5       *of each insular area, shall update the plans required under*  
6       *subsection (c) by—*

7           “(A) *updating the contents required by sub-*  
8       *section (c);*

9           “(B) *drafting long-term energy plans for such*  
10       *insular areas with the objective of reducing, to the ex-*  
11       *tent feasible, their reliance on energy imports by the*  
12       *year 2012, increasing energy conservation and energy*  
13       *efficiency, and maximizing, to the extent feasible, use*  
14       *of indigenous energy sources; and*

15          “(C) *drafting long-term energy transmission line*  
16       *plans for such insular areas with the objective that*  
17       *the maximum percentage feasible of electric power*  
18       *transmission and distribution lines in each insular*  
19       *area be protected from damage caused by hurricanes*  
20       *and typhoons.*

21          “(2) *Not later than December 31, 2007, the Secretary*  
22       *of the Interior shall submit to Congress the updated plans*  
23       *for each insular area required by this subsection.”; and*

24           (4) *by amending subsection (g)(4) to read as fol-*  
25       *lows:*

1           “(4) *POWER LINE GRANTS FOR INSULAR*  
2     *AREAS.*—

3           “(A) *IN GENERAL.*—*The Secretary of the*  
4     *Interior is authorized to make grants to govern-*  
5     *ments of insular areas of the United States to*  
6     *carry out eligible projects to protect electric*  
7     *power transmission and distribution lines in*  
8     *such insular areas from damage caused by hurri-*  
9     *canes and typhoons.*

10          “(B) *ELIGIBLE PROJECTS.*—*The Secretary*  
11     *may award grants under subparagraph (A) only*  
12     *to governments of insular areas of the United*  
13     *States that submit written project plans to the*  
14     *Secretary for projects that meet the following cri-*  
15     *teria:*

16           “(i) *The project is designed to protect*  
17     *electric power transmission and distribution*  
18     *lines located in 1 or more of the insular*  
19     *areas of the United States from damage*  
20     *caused by hurricanes and typhoons.*

21           “(ii) *The project is likely to substan-*  
22     *tially reduce the risk of future damage,*  
23     *hardship, loss, or suffering.*

24           “(iii) *The project addresses 1 or more*  
25     *problems that have been repetitive or that*



1           pose a significant risk to public health and  
2           safety.

3           “(iv) *The project is not likely to cost*  
4           *more than the value of the reduction in di-*  
5           *rect damage and other negative impacts*  
6           *that the project is designed to prevent or*  
7           *mitigate. The cost benefit analysis required*  
8           *by this criterion shall be computed on a net*  
9           *present value basis.*

10          “(v) *The project design has taken into*  
11          *consideration long-term changes to the areas*  
12          *and persons it is designed to protect and*  
13          *has manageable future maintenance and*  
14          *modification requirements.*

15          “(vi) *The project plan includes an*  
16          *analysis of a range of options to address the*  
17          *problem it is designed to prevent or miti-*  
18          *gate and a justification for the selection of*  
19          *the project in light of that analysis.*

20          “(vii) *The applicant has demonstrated*  
21          *to the Secretary that the matching funds re-*  
22          *quired by subparagraph (D) are available.*

23          “(C) *PRIORITY.—When making grants*  
24          *under this paragraph, the Secretary shall give*

1       *priority to grants for projects which are likely*  
2       *to—*

3               “(i) *have the greatest impact on reduc-*  
4               *ing future disaster losses; and*

5               “(ii) *best conform with plans that have*  
6               *been approved by the Federal Government*  
7               *or the government of the insular area where*  
8               *the project is to be carried out for develop-*  
9               *ment or hazard mitigation for that insular*  
10              *area.*

11              “(D) *MATCHING REQUIREMENT.—The Fed-*  
12              *eral share of the cost for a project for which a*  
13              *grant is provided under this paragraph shall not*  
14              *exceed 75 percent of the total cost of that project.*  
15              *The non-Federal share of the cost may be pro-*  
16              *vided in the form of cash or services.*

17              “(E) *TREATMENT OF FUNDS FOR CERTAIN*  
18              *PURPOSES.—Grants provided under this para-*  
19              *graph shall not be considered as income, a re-*  
20              *source, or a duplicative program when deter-*  
21              *mining eligibility or benefit levels for Federal*  
22              *major disaster and emergency assistance.*

23              “(F) *AUTHORIZATION OF APPROPRIA-*  
24              *TIONS.—There are authorized to be appropriated*  
25              *to carry out this paragraph \$5,000,000 for each*

1           *fiscal year beginning after the date of the enact-*  
2           *ment of this paragraph.”.*

3   **SEC. 205. USE OF PHOTOVOLTAIC ENERGY IN PUBLIC**  
4           **BUILDINGS.**

5           *(a) IN GENERAL.—Part 4 of title V of the National*  
6   *Energy Conservation Policy Act (42 U.S.C. 8271 et seq.)*  
7   *is amended by adding at the end the following:*

8   **“SEC. 570. USE OF PHOTOVOLTAIC ENERGY IN PUBLIC**  
9           **BUILDINGS.**

10          *“(a) PHOTOVOLTAIC ENERGY COMMERCIALIZATION*  
11   *PROGRAM.—*

12           *“(1) IN GENERAL.—The Secretary may establish*  
13   *a photovoltaic energy commercialization program for*  
14   *the procurement and installation of photovoltaic solar*  
15   *electric systems for electric production in new and ex-*  
16   *isting public buildings.*

17           *“(2) PURPOSES.—The purposes of the program*  
18   *shall be to accomplish the following:*

19           *“(A) To accelerate the growth of a commer-*  
20   *cially viable photovoltaic industry to make this*  
21   *energy system available to the general public as*  
22   *an option which can reduce the national con-*  
23   *sumption of fossil fuel.*

24           *“(B) To reduce the fossil fuel consumption*  
25   *and costs of the Federal Government.*

1           “(C) *To attain the goal of installing solar*  
 2           *energy systems in 20,000 Federal buildings by*  
 3           *2010, as contained in the Federal Government’s*  
 4           *Million Solar Roof Initiative of 1997.*

5           “(D) *To stimulate the general use within*  
 6           *the Federal Government of life-cycle costing and*  
 7           *innovative procurement methods.*

8           “(E) *To develop program performance data*  
 9           *to support policy decisions on future incentive*  
 10          *programs with respect to energy.*

11          “(3) *ACQUISITION OF PHOTOVOLTAIC SOLAR*  
 12          *ELECTRIC SYSTEMS.—*

13               “(A) *IN GENERAL.—The program shall pro-*  
 14               *vide for the acquisition of photovoltaic solar elec-*  
 15               *tric systems and associated storage capability for*  
 16               *use in public buildings.*

17               “(B) *ACQUISITION LEVELS.—The acquisi-*  
 18               *tion of photovoltaic electric systems shall be at a*  
 19               *level substantial enough to allow use of low-cost*  
 20               *production techniques with at least 150*  
 21               *megawatts (peak) cumulative acquired during*  
 22               *the 5 years of the program.*

23               “(4) *ADMINISTRATION.—The Secretary shall ad-*  
 24               *minister the program and shall—*

1           “(A) issue such rules and regulations as  
 2           may be appropriate to monitor and assess the  
 3           performance and operation of photovoltaic solar  
 4           electric systems installed pursuant to this sub-  
 5           section;

6           “(B) develop innovative procurement strate-  
 7           gies for the acquisition of such systems; and

8           “(C) transmit to Congress an annual report  
 9           on the results of the program.

10       “(b) *PHOTOVOLTAIC SYSTEMS EVALUATION PRO-*  
 11 *GRAM.*—

12           “(1) *IN GENERAL.*—Not later than 60 days after  
 13           the date of enactment of this section, the Secretary  
 14           shall establish a photovoltaic solar energy systems  
 15           evaluation program to evaluate such photovoltaic  
 16           solar energy systems as are required in public build-  
 17           ings.

18           “(2) *PROGRAM REQUIREMENT.*—In evaluating  
 19           photovoltaic solar energy systems under the program,  
 20           the Secretary shall ensure that such systems reflect the  
 21           most advanced technology.

22       “(c) *AUTHORIZATION OF APPROPRIATIONS.*—

23           “(1) *PHOTOVOLTAIC ENERGY COMMERCIALIZA-*  
 24           *TION PROGRAM.*—There are authorized to be appro-  
 25           priated to carry out subsection (a) \$50,000,000 for

1        *each of fiscal years 2006 through 2010. Such sums*  
 2        *shall remain available until expended.*

3                “(2) *PHOTOVOLTAIC SYSTEMS EVALUATION PRO-*  
 4        *GRAM.—There are authorized to be appropriated to*  
 5        *carry out subsection (b) \$10,000,000 for each of fiscal*  
 6        *years 2006 through 2010. Such sums shall remain*  
 7        *available until expended.”.*

8        (b) *CONFORMING AMENDMENT.—The table of sections*  
 9        *for the National Energy Conservation Policy Act is amend-*  
 10       *ed by inserting after the item relating to section 569 the*  
 11       *following:*

*“Sec. 570. Use of photovoltaic energy in public buildings.”.*

12    **SEC. 206. GRANTS TO IMPROVE THE COMMERCIAL VALUE**  
 13                **OF FOREST BIOMASS FOR ELECTRIC ENERGY,**  
 14                **USEFUL HEAT, TRANSPORTATION FUELS, PE-**  
 15                **TROLEUM-BASED PRODUCT SUBSTITUTES,**  
 16                **AND OTHER COMMERCIAL PURPOSES.**

17        (a) *FINDINGS.—Congress finds the following:*

18                (1) *Thousands of communities in the United*  
 19        *States, many located near Federal lands, are at risk*  
 20        *to wildfire. Approximately 190,000,000 acres of land*  
 21        *managed by the Secretary of Agriculture and the Sec-*  
 22        *retary of the Interior are at risk of catastrophic fire*  
 23        *in the near future. The accumulation of heavy forest*  
 24        *fuel loads continues to increase as a result of disease,*

1       *insect infestations, and drought, further raising the*  
2       *risk of fire each year.*

3               *(2) In addition, more than 70,000,000 acres*  
4       *across all land ownerships are at risk to higher than*  
5       *normal mortality over the next 15 years from insect*  
6       *infestation and disease. High levels of tree mortality*  
7       *from insects and disease result in increased fire risk,*  
8       *loss of old growth, degraded watershed conditions, and*  
9       *changes in species diversity and productivity, as well*  
10       *as diminished fish and wildlife habitat and decreased*  
11       *timber values.*

12               *(3) Preventive treatments such as removing fuel*  
13       *loading, ladder fuels, and hazard trees, planting*  
14       *proper species mix and restoring and protecting early*  
15       *successional habitat, and other specific restoration*  
16       *treatments designed to reduce the susceptibility of for-*  
17       *est land, woodland, and rangeland to insect out-*  
18       *breaks, disease, and catastrophic fire present the*  
19       *greatest opportunity for long-term forest health by*  
20       *creating a mosaic of species-mix and age distribution.*  
21       *Such prevention treatments are widely acknowledged*  
22       *to be more successful and cost effective than suppres-*  
23       *sion treatments in the case of insects, disease, and*  
24       *fire.*

1           (4) *The byproducts of preventive treatment*  
2           *(wood, brush, thinnings, chips, slash, and other haz-*  
3           *ardous fuels) removed from forest lands, woodlands*  
4           *and rangelands represent an abundant supply of bio-*  
5           *mass for biomass-to-energy facilities and raw mate-*  
6           *rial for business. There are currently few markets for*  
7           *the extraordinary volumes of byproducts being gen-*  
8           *erated as a result of the necessary large-scale preven-*  
9           *tive treatment activities.*

10          (5) *The United States should—*

11                (A) *promote economic and entrepreneurial*  
12                *opportunities in using byproducts removed*  
13                *through preventive treatment activities related to*  
14                *hazardous fuels reduction, disease, and insect in-*  
15                *festation; and*

16                (B) *develop and expand markets for tradi-*  
17                *tionally underused wood and biomass as an out-*  
18                *let for byproducts of preventive treatment activi-*  
19                *ties.*

20          (b) *DEFINITIONS.—In this section:*

21                (1) *BIOMASS.—The term “biomass” means trees*  
22                *and woody plants, including limbs, tops, needles, and*  
23                *other woody parts, and byproducts of preventive*  
24                *treatment, such as wood, brush, thinnings, chips, and*  
25                *slash, that are removed—*



1                   (A) to reduce hazardous fuels; or

2                   (B) to reduce the risk of or to contain dis-  
3                   ease or insect infestation.

4                   (2) *INDIAN TRIBE*.—The term “Indian tribe” has  
5                   the meaning given the term in section 4(e) of the In-  
6                   dian Self-Determination and Education Assistance  
7                   Act (25 U.S.C. 450b(e)).

8                   (3) *PERSON*.—The term “person” includes—

9                   (A) an individual;

10                  (B) a community (as determined by the  
11                  Secretary concerned);

12                  (C) an Indian tribe;

13                  (D) a small business, micro-business, or a  
14                  corporation that is incorporated in the United  
15                  States; and

16                  (E) a nonprofit organization.

17                  (4) *PREFERRED COMMUNITY*.—The term “pre-  
18                  ferred community” means—

19                  (A) any town, township, municipality, or  
20                  other similar unit of local government (as deter-  
21                  mined by the Secretary concerned) that—

22                         (i) has a population of not more than  
23                         50,000 individuals; and

24                         (ii) the Secretary concerned, in the sole  
25                         discretion of the Secretary concerned, deter-

1            *mines contains or is located near land, the*  
 2            *condition of which is at significant risk of*  
 3            *catastrophic wildfire, disease, or insect in-*  
 4            *festation or which suffers from disease or*  
 5            *insect infestation; or*

6            *(B) any county that—*

7                    *(i) is not contained within a metro-*  
 8                    *politan statistical area; and*

9                    *(ii) the Secretary concerned, in the sole*  
 10                   *discretion of the Secretary concerned, deter-*  
 11                   *mines contains or is located near land, the*  
 12                   *condition of which is at significant risk of*  
 13                   *catastrophic wildfire, disease, or insect in-*  
 14                   *festation or which suffers from disease or*  
 15                   *insect infestation.*

16            *(5) SECRETARY CONCERNED.—The term “Sec-*  
 17            *retary concerned” means—*

18                    *(A) the Secretary of Agriculture with re-*  
 19                    *spect to National Forest System lands; and*

20                    *(B) the Secretary of the Interior with re-*  
 21                    *spect to Federal lands under the jurisdiction of*  
 22                    *the Secretary of the Interior and Indian lands.*

23            *(c) BIOMASS COMMERCIAL USE GRANT PROGRAM.—*

24                    *(1) IN GENERAL.—The Secretary concerned may*  
 25                    *make grants to any person that owns or operates a*

1     *facility that uses biomass as a raw material to*  
2     *produce electric energy, sensible heat, transportation*  
3     *fuels, or substitutes for petroleum-based products to*  
4     *offset the costs incurred to purchase biomass for use*  
5     *by such facility.*

6             (2) *GRANT AMOUNTS.*—*A grant under this sub-*  
7     *section may not exceed \$20 per green ton of biomass*  
8     *delivered.*

9             (3) *MONITORING OF GRANT RECIPIENT ACTIVI-*  
10    *TIES.*—*As a condition of a grant under this sub-*  
11    *section, the grant recipient shall keep such records as*  
12    *the Secretary concerned may require to fully and cor-*  
13    *rectly disclose the use of the grant funds and all*  
14    *transactions involved in the purchase of biomass.*  
15    *Upon notice by a representative of the Secretary con-*  
16    *cerned, the grant recipient shall afford the representa-*  
17    *tive reasonable access to the facility that purchases or*  
18    *uses biomass and an opportunity to examine the in-*  
19    *ventory and records of the facility.*

20             (d) *IMPROVED BIOMASS USE GRANT PROGRAM.*—

21             (1) *IN GENERAL.*—*The Secretary concerned may*  
22    *make grants to persons to offset the cost of projects to*  
23    *develop or research opportunities to improve the use*  
24    *of, or add value to, biomass. In making such grants,*

1        *the Secretary concerned shall give preference to per-*  
2        *sons in preferred communities.*

3            (2) *SELECTION.—The Secretary concerned shall*  
4        *select a grant recipient under paragraph (1) after*  
5        *giving consideration to the anticipated public benefits*  
6        *of the project, including the potential to develop ther-*  
7        *mal or electric energy resources or affordable energy,*  
8        *opportunities for the creation or expansion of small*  
9        *businesses and micro-businesses, and the potential for*  
10       *new job creation.*

11           (3) *GRANT AMOUNT.—A grant under this sub-*  
12       *section may not exceed \$500,000.*

13           (e) *AUTHORIZATION OF APPROPRIATIONS.—There are*  
14       *authorized to be appropriated \$50,000,000 for each of the*  
15       *fiscal years 2006 through 2016 to carry out this section.*

16           (f) *REPORT.—Not later than October 1, 2012, the Sec-*  
17       *retary of Agriculture, in consultation with the Secretary of*  
18       *the Interior, shall submit to the Committee on Energy and*  
19       *Natural Resources and the Committee on Agriculture, Nu-*  
20       *trition, and Forestry of the Senate and the Committee on*  
21       *Resources, the Committee on Energy and Commerce, and*  
22       *the Committee on Agriculture of the House of Representa-*  
23       *tives a report describing the results of the grant programs*  
24       *authorized by this section. The report shall include the fol-*  
25       *lowing:*

1           (1) *An identification of the size, type, and the*  
 2           *use of biomass by persons that receive grants under*  
 3           *this section.*

4           (2) *The distance between the land from which the*  
 5           *biomass was removed and the facility that used the*  
 6           *biomass.*

7           (3) *The economic impacts, particularly new job*  
 8           *creation, resulting from the grants to and operation*  
 9           *of the eligible operations.*

10 **SEC. 207. BIOBASED PRODUCTS.**

11           *Section 9002(c)(1) of the Farm Security and Rural*  
 12           *Investment Act of 2002 (7 U.S.C. 8102(c)(1)) is amended*  
 13           *by inserting “or such items that comply with the regula-*  
 14           *tions issued under section 103 of Public Law 100–556 (42*  
 15           *U.S.C. 6914b–1)” after “practicable”.*

16 **SEC. 208. RENEWABLE ENERGY SECURITY.**

17           (a) *WEATHERIZATION ASSISTANCE.*—*Section 415(c) of*  
 18           *the Energy Conservation and Production Act (42 U.S.C.*  
 19           *6865(c)) is amended—*

20                   (1) *in paragraph (1), by striking “in paragraph*  
 21                   *(3)” and inserting “in paragraphs (3) and (4)”;*

22                   (2) *in paragraph (3), by striking “\$2,500 per*  
 23                   *dwelling unit average provided in paragraph (1)”*  
 24                   *and inserting “dwelling unit averages provided in*  
 25                   *paragraphs (1) and (4)”;* and

1           (3) by adding at the end the following new para-  
2       graphs:

3           “(4) *The expenditure of financial assistance provided*  
4 *under this part for labor, weatherization materials, and re-*  
5 *lated matters for a renewable energy system shall not exceed*  
6 *an average of \$3,000 per dwelling unit.*

7           “(5)(A) *The Secretary shall by regulations—*

8               *“(i) establish the criteria which are to be used in*  
9 *prescribing performance and quality standards under*  
10 *paragraph (6)(A)(ii) or in specifying any form of re-*  
11 *newable energy under paragraph (6)(A)(i)(I); and*

12               *“(ii) establish a procedure under which a manu-*  
13 *facturer of an item may request the Secretary to cer-*  
14 *tify that the item will be treated, for purposes of this*  
15 *paragraph, as a renewable energy system.*

16           “(B) *The Secretary shall make a final determination*  
17 *with respect to any request filed under subparagraph*  
18 *(A)(ii) within 1 year after the filing of the request, together*  
19 *with any information required to be filed with such request*  
20 *under subparagraph (A)(ii).*

21           “(C) *Each month the Secretary shall publish a report*  
22 *of any request under subparagraph (A)(ii) which has been*  
23 *denied during the preceding month and the reasons for the*  
24 *denial.*

1       “(D) *The Secretary shall not specify any form of re-*  
2 *newable energy under paragraph (6)(A)(i)(I) unless the*  
3 *Secretary determines that—*

4               “(i) *there will be a reduction in oil or natural*  
5 *gas consumption as a result of such specification;*

6               “(ii) *such specification will not result in an in-*  
7 *creased use of any item which is known to be, or rea-*  
8 *sonably suspected to be, environmentally hazardous or*  
9 *a threat to public health or safety; and*

10              “(iii) *available Federal subsidies do not make*  
11 *such specification unnecessary or inappropriate (in*  
12 *the light of the most advantageous allocation of eco-*  
13 *nomical resources).*

14       “(6) *In this subsection—*

15              “(A) *the term ‘renewable energy system’ means a*  
16 *system which—*

17                      “(i) *when installed in connection with a*  
18 *dwelling, transmits or uses—*

19                              “(I) *solar energy, energy derived from*  
20 *the geothermal deposits, energy derived from*  
21 *biomass, or any other form of renewable en-*  
22 *ergy which the Secretary specifies by regu-*  
23 *lations, for the purpose of heating or cooling*  
24 *such dwelling or providing hot water or*  
25 *electricity for use within such dwelling; or*

1                   “(II) wind energy for nonbusiness resi-  
2                   dential purposes;

3                   “(ii) meets the performance and quality  
4                   standards (if any) which have been prescribed by  
5                   the Secretary by regulations;

6                   “(iii) in the case of a combustion rated sys-  
7                   tem, has a thermal efficiency rating of at least  
8                   75 percent; and

9                   “(iv) in the case of a solar system, has a  
10                  thermal efficiency rating of at least 15 percent;  
11                  and

12                 “(B) the term ‘biomass’ means any organic mat-  
13                 ter that is available on a renewable or recurring  
14                 basis, including agricultural crops and trees, wood  
15                 and wood wastes and residues, plants (including  
16                 aquatic plants), grasses, residues, fibers, and animal  
17                 wastes, municipal wastes, and other waste mate-  
18                 rials.”.

19                 (b) *DISTRICT HEATING AND COOLING PROGRAMS.*—  
20                 Section 172 of the Energy Policy Act of 1992 (42 U.S.C.  
21                 13451 note) is amended—

22                   (1) in subsection (a)—

23                   (A) by striking “and” at the end of para-  
24                   graph (3);



1                   (B) by striking the period at the end of  
2                   paragraph (4) and inserting “; and”; and

3                   (C) by adding at the end the following new  
4                   paragraph:

5                   “(5) evaluate the use of renewable energy systems  
6                   (as such term is defined in section 415(c) of the En-  
7                   ergy Conservation and Production Act (42 U.S.C.  
8                   6865(c))) in residential buildings.”; and

9                   (2) in subsection (b), by striking “this Act” and  
10                  inserting “the Energy Policy Act of 2005”.

11               (c) *DEFINITION OF BIOMASS.*—Section 203(2) of the  
12 *Biomass Energy and Alcohol Fuels Act of 1980* (42 U.S.C.  
13 8802(2)) is amended to read as follows:

14               “(2) The term ‘biomass’ means any organic mat-  
15               ter that is available on a renewable or recurring  
16               basis, including agricultural crops and trees, wood  
17               and wood wastes and residues, plants (including  
18               aquatic plants), grasses, residues, fibers, and animal  
19               wastes, municipal wastes, and other waste mate-  
20               rials.”.

21               (d) *REBATE PROGRAM.*—

22               (1) *ESTABLISHMENT.*—The Secretary of Energy  
23               shall establish a program providing rebates for con-  
24               sumers for expenditures made for the installation of

1        *a renewable energy system in connection with a*  
 2        *dwelling unit or small business.*

3                (2) *AMOUNT OF REBATE.—Rebates provided*  
 4        *under the program established under paragraph (1)*  
 5        *shall be in an amount not to exceed the lesser of—*

6                        (A) *25 percent of the expenditures described*  
 7                        *in paragraph (1) made by the consumer; or*

8                        (B) *\$3,000.*

9                (3) *DEFINITION.—For purposes of this sub-*  
 10        *section, the term “renewable energy system” has the*  
 11        *meaning given that term in section 415(c)(6)(A) of*  
 12        *the Energy Conservation and Production Act (42*  
 13        *U.S.C. 6865(c)(6)(A)), as added by subsection (a)(3)*  
 14        *of this section.*

15                (4) *AUTHORIZATION OF APPROPRIATIONS.—*  
 16        *There are authorized to be appropriated to the Sec-*  
 17        *retary of Energy for carrying out this subsection, to*  
 18        *remain available until expended—*

19                        (A) *\$150,000,000 for fiscal year 2006;*

20                        (B) *\$150,000,000 for fiscal year 2007;*

21                        (C) *\$200,000,000 for fiscal year 2008;*

22                        (D) *\$250,000,000 for fiscal year 2009; and*

23                        (E) *\$250,000,000 for fiscal year 2010.*

24                (e) *RENEWABLE FUEL INVENTORY.—Not later than*  
 25        *180 days after the date of enactment of this Act, the Sec-*

1 *retary of Energy shall transmit to Congress a report con-*  
 2 *taining—*

3 *(1) an inventory of renewable fuels available for*  
 4 *consumers; and*

5 *(2) a projection of future inventories of renew-*  
 6 *able fuels based on the incentives provided in this sec-*  
 7 *tion*

## 8 ***Subtitle C—Hydroelectric***

### 9 ***PART I—ALTERNATIVE CONDITIONS***

#### 10 ***SEC. 231. ALTERNATIVE CONDITIONS AND FISHWAYS.***

11 *(a) FEDERAL RESERVATIONS.—Section 4(e) of the*  
 12 *Federal Power Act (16 U.S.C. 797(e)) is amended by insert-*  
 13 *ing after “adequate protection and utilization of such res-*  
 14 *ervation.” at the end of the first proviso the following: “The*  
 15 *license applicant shall be entitled to a determination on the*  
 16 *record, after opportunity for an expedited agency trial-type*  
 17 *hearing of any disputed issues of material fact, with respect*  
 18 *to such conditions. Such hearing may be conducted in ac-*  
 19 *cordance with procedures established by agency regulation*  
 20 *in consultation with the Federal Energy Regulatory Com-*  
 21 *mission.”.*

22 *(b) FISHWAYS.—Section 18 of the Federal Power Act*  
 23 *(16 U.S.C. 811) is amended by inserting after “and such*  
 24 *fishways as may be prescribed by the Secretary of Com-*  
 25 *merce.” the following: “The license applicant shall be enti-*

1 tled to a determination on the record, after opportunity for  
 2 an expedited agency trial-type hearing of any disputed  
 3 issues of material fact, with respect to such fishways. Such  
 4 hearing may be conducted in accordance with procedures  
 5 established by agency regulation in consultation with the  
 6 Federal Energy Regulatory Commission.”.

7 (c) *ALTERNATIVE CONDITIONS AND PRESCRIPTIONS.*—  
 8 Part I of the Federal Power Act (16 U.S.C. 791a et seq.)  
 9 is amended by adding the following new section at the end  
 10 thereof:

11 **“SEC. 33. ALTERNATIVE CONDITIONS AND PRESCRIPTIONS.**

12 “(a) *ALTERNATIVE CONDITIONS.*—(1) Whenever any  
 13 person applies for a license for any project works within  
 14 any reservation of the United States, and the Secretary of  
 15 the department under whose supervision such reservation  
 16 falls (referred to in this subsection as ‘the Secretary’) deems  
 17 a condition to such license to be necessary under the first  
 18 proviso of section 4(e), the license applicant may propose  
 19 an alternative condition.

20 “(2) Notwithstanding the first proviso of section 4(e),  
 21 the Secretary shall accept the proposed alternative condi-  
 22 tion referred to in paragraph (1), and the Commission shall  
 23 include in the license such alternative condition, if the Sec-  
 24 retary determines, based on substantial evidence provided

1 *by the license applicant or otherwise available to the Sec-*  
2 *retary, that such alternative condition—*

3 *“(A) provides for the adequate protection and*  
4 *utilization of the reservation; and*

5 *“(B) will either—*

6 *“(i) cost less to implement; or*

7 *“(ii) result in improved operation of the*  
8 *project works for electricity production,*

9 *as compared to the condition initially deemed nec-*  
10 *essary by the Secretary.*

11 *“(3) The Secretary shall submit into the public record*  
12 *of the Commission proceeding with any condition under*  
13 *section 4(e) or alternative condition it accepts under this*  
14 *section, a written statement explaining the basis for such*  
15 *condition, and reason for not accepting any alternative con-*  
16 *dition under this section. The written statement must dem-*  
17 *onstrate that the Secretary gave equal consideration to the*  
18 *effects of the condition adopted and alternatives not accept-*  
19 *ed on energy supply, distribution, cost, and use; flood con-*  
20 *trol; navigation; water supply; and air quality (in addition*  
21 *to the preservation of other aspects of environmental qual-*  
22 *ity); based on such information as may be available to the*  
23 *Secretary, including information voluntarily provided in*  
24 *a timely manner by the applicant and others. The Secretary*  
25 *shall also submit, together with the aforementioned written*

1 *statement, all studies, data, and other factual information*  
 2 *available to the Secretary and relevant to the Secretary's*  
 3 *decision.*

4       “(4) *Nothing in this section shall prohibit other inter-*  
 5 *ested parties from proposing alternative conditions.*

6       “(5) *If the Secretary does not accept an applicant's*  
 7 *alternative condition under this section, and the Commis-*  
 8 *sion finds that the Secretary's condition would be incon-*  
 9 *sistent with the purposes of this part, or other applicable*  
 10 *law, the Commission may refer the dispute to the Commis-*  
 11 *sion's Dispute Resolution Service. The Dispute Resolution*  
 12 *Service shall consult with the Secretary and the Commis-*  
 13 *sion and issue a non-binding advisory within 90 days. The*  
 14 *Secretary may accept the Dispute Resolution Service advi-*  
 15 *sory unless the Secretary finds that the recommendation*  
 16 *will not provide for the adequate protection and utilization*  
 17 *of the reservation. The Secretary shall submit the advisory*  
 18 *and the Secretary's final written determination into the*  
 19 *record of the Commission's proceeding.*

20       “(b) *ALTERNATIVE PRESCRIPTIONS.—(1) Whenever*  
 21 *the Secretary of the Interior or the Secretary of Commerce*  
 22 *prescribes a fishway under section 18, the license applicant*  
 23 *or licensee may propose an alternative to such prescription*  
 24 *to construct, maintain, or operate a fishway.*

1       “(2) Notwithstanding section 18, the Secretary of the  
2 Interior or the Secretary of Commerce, as appropriate, shall  
3 accept and prescribe, and the Commission shall require, the  
4 proposed alternative referred to in paragraph (1), if the  
5 Secretary of the appropriate department determines, based  
6 on substantial evidence provided by the licensee or otherwise  
7 available to the Secretary, that such alternative—

8               “(A) will be no less protective than the fishway  
9 initially prescribed by the Secretary; and

10              “(B) will either—

11                      “(i) cost less to implement; or

12                      “(ii) result in improved operation of the  
13 project works for electricity production,  
14 as compared to the fishway initially deemed necessary  
15 by the Secretary.

16       “(3) The Secretary concerned shall submit into the  
17 public record of the Commission proceeding with any pre-  
18 scription under section 18 or alternative prescription it ac-  
19 cepts under this section, a written statement explaining the  
20 basis for such prescription, and reason for not accepting  
21 any alternative prescription under this section. The written  
22 statement must demonstrate that the Secretary gave equal  
23 consideration to the effects of the condition adopted and al-  
24 ternatives not accepted on energy supply, distribution, cost,  
25 and use; flood control; navigation; water supply; and air

1 *quality (in addition to the preservation of other aspects of*  
2 *environmental quality); based on such information as may*  
3 *be available to the Secretary, including information volun-*  
4 *tarily provided in a timely manner by the applicant and*  
5 *others. The Secretary shall also submit, together with the*  
6 *aforementioned written statement, all studies, data, and*  
7 *other factual information available to the Secretary and rel-*  
8 *evant to the Secretary's decision.*

9       “(4) *Nothing in this section shall prohibit other inter-*  
10 *ested parties from proposing alternative prescriptions.*

11       “(5) *If the Secretary concerned does not accept an ap-*  
12 *plicant's alternative prescription under this section, and*  
13 *the Commission finds that the Secretary's prescription*  
14 *would be inconsistent with the purposes of this part, or*  
15 *other applicable law, the Commission may refer the dispute*  
16 *to the Commission's Dispute Resolution Service. The Dis-*  
17 *pute Resolution Service shall consult with the Secretary and*  
18 *the Commission and issue a non-binding advisory within*  
19 *90 days. The Secretary may accept the Dispute Resolution*  
20 *Service advisory unless the Secretary finds that the rec-*  
21 *ommendation will be less protective than the fishway ini-*  
22 *tially prescribed by the Secretary. The Secretary shall sub-*  
23 *mit the advisory and the Secretary's final written deter-*  
24 *mination into the record of the Commission's proceeding.”.*



1           **PART II—ADDITIONAL HYDROPOWER**

2   **SEC. 241. HYDROELECTRIC PRODUCTION INCENTIVES.**

3           (a) *INCENTIVE PAYMENTS.*—For electric energy gen-  
4   erated and sold by a qualified hydroelectric facility during  
5   the incentive period, the Secretary of Energy (referred to  
6   in this section as the “Secretary”) shall make, subject to  
7   the availability of appropriations, incentive payments to  
8   the owner or operator of such facility. The amount of such  
9   payment made to any such owner or operator shall be as  
10  determined under subsection (e) of this section. Payments  
11  under this section may only be made upon receipt by the  
12  Secretary of an incentive payment application which estab-  
13  lishes that the applicant is eligible to receive such payment  
14  and which satisfies such other requirements as the Secretary  
15  deems necessary. Such application shall be in such form,  
16  and shall be submitted at such time, as the Secretary shall  
17  establish.

18          (b) *DEFINITIONS.*—For purposes of this section:

19               (1) *QUALIFIED HYDROELECTRIC FACILITY.*—The  
20   term “qualified hydroelectric facility” means a tur-  
21   bine or other generating device owned or solely oper-  
22   ated by a non-Federal entity which generates hydro-  
23   electric energy for sale and which is added to an ex-  
24   isting dam or conduit.

25               (2) *EXISTING DAM OR CONDUIT.*—The term “ex-  
26   isting dam or conduit” means any dam or conduit

1        *the construction of which was completed before the*  
2        *date of the enactment of this section and which does*  
3        *not require any construction or enlargement of im-*  
4        *poundment or diversion structures (other than repair*  
5        *or reconstruction) in connection with the installation*  
6        *of a turbine or other generating device.*

7            (3) CONDUIT.—*The term “conduit” has the same*  
8        *meaning as when used in section 30(a)(2) of the Fed-*  
9        *eral Power Act (16 U.S.C. 823a(a)(2)).*

10        *The terms defined in this subsection shall apply without*  
11        *regard to the hydroelectric kilowatt capacity of the facility*  
12        *concerned, without regard to whether the facility uses a dam*  
13        *owned by a governmental or nongovernmental entity, and*  
14        *without regard to whether the facility begins operation on*  
15        *or after the date of the enactment of this section.*

16            (c) ELIGIBILITY WINDOW.—*Payments may be made*  
17        *under this section only for electric energy generated from*  
18        *a qualified hydroelectric facility which begins operation*  
19        *during the period of 10 fiscal years beginning with the first*  
20        *full fiscal year occurring after the date of enactment of this*  
21        *subtitle.*

22            (d) INCENTIVE PERIOD.—*A qualified hydroelectric fa-*  
23        *cility may receive payments under this section for a period*  
24        *of 10 fiscal years (referred to in this section as the “incen-*  
25        *tive period”). Such period shall begin with the fiscal year*

1 *in which electric energy generated from the facility is first*  
2 *eligible for such payments.*

3 *(e) AMOUNT OF PAYMENT.—*

4 *(1) IN GENERAL.—Payments made by the Sec-*  
5 *retary under this section to the owner or operator of*  
6 *a qualified hydroelectric facility shall be based on the*  
7 *number of kilowatt hours of hydroelectric energy gen-*  
8 *erated by the facility during the incentive period. For*  
9 *any such facility, the amount of such payment shall*  
10 *be 1.8 cents per kilowatt hour (adjusted as provided*  
11 *in paragraph (2)), subject to the availability of ap-*  
12 *propriations under subsection (g), except that no fa-*  
13 *cility may receive more than \$750,000 in 1 calendar*  
14 *year.*

15 *(2) ADJUSTMENTS.—The amount of the payment*  
16 *made to any person under this section as provided in*  
17 *paragraph (1) shall be adjusted for inflation for each*  
18 *fiscal year beginning after calendar year 2005 in the*  
19 *same manner as provided in the provisions of section*  
20 *29(d)(2)(B) of the Internal Revenue Code of 1986, ex-*  
21 *cept that in applying such provisions the calendar*  
22 *year 2005 shall be substituted for calendar year 1979.*

23 *(f) SUNSET.—No payment may be made under this*  
24 *section to any qualified hydroelectric facility after the expi-*  
25 *ration of the period of 20 fiscal years beginning with the*

1 *first full fiscal year occurring after the date of enactment*  
2 *of this subtitle, and no payment may be made under this*  
3 *section to any such facility after a payment has been made*  
4 *with respect to such facility for a period of 10 fiscal years.*

5 (g) *AUTHORIZATION OF APPROPRIATIONS.—There are*  
6 *authorized to be appropriated to the Secretary to carry out*  
7 *the purposes of this section \$10,000,000 for each of the fiscal*  
8 *years 2006 through 2015.*

9 **SEC. 242. HYDROELECTRIC EFFICIENCY IMPROVEMENT.**

10 (a) *INCENTIVE PAYMENTS.—The Secretary of Energy*  
11 *shall make incentive payments to the owners or operators*  
12 *of hydroelectric facilities at existing dams to be used to*  
13 *make capital improvements in the facilities that are di-*  
14 *rectly related to improving the efficiency of such facilities*  
15 *by at least 3 percent.*

16 (b) *LIMITATIONS.—Incentive payments under this sec-*  
17 *tion shall not exceed 10 percent of the costs of the capital*  
18 *improvement concerned and not more than 1 payment may*  
19 *be made with respect to improvements at a single facility.*  
20 *No payment in excess of \$750,000 may be made with respect*  
21 *to improvements at a single facility.*

22 (c) *AUTHORIZATION OF APPROPRIATIONS.—There are*  
23 *authorized to be appropriated to carry out this section not*  
24 *more than \$10,000,000 for each of the fiscal years 2006*  
25 *through 2015.*

1 **SEC. 243. SMALL HYDROELECTRIC POWER PROJECTS.**

2       Section 408(a)(6) of the Public Utility Regulatory  
3 Policies Act of 1978 (16 U.S.C. 2708(a)(6)) is amended by  
4 striking “April 20, 1977” and inserting “March 4, 2003”.

5 **SEC. 244. INCREASED HYDROELECTRIC GENERATION AT EX-**  
6 **ISTING FEDERAL FACILITIES.**

7       (a) *IN GENERAL.*—The Secretary of the Interior and  
8 the Secretary of Energy, in consultation with the Secretary  
9 of the Army, shall jointly conduct a study of the potential  
10 for increasing electric power production capability at feder-  
11 ally owned or operated water regulation, storage, and con-  
12 veyance facilities.

13       (b) *CONTENT.*—The study under this section shall in-  
14 clude identification and description in detail of each facil-  
15 ity that is capable, with or without modification, of pro-  
16 ducing additional hydroelectric power, including esti-  
17 mation of the existing potential for the facility to generate  
18 hydroelectric power.

19       (c) *REPORT.*—The Secretaries shall submit to the Com-  
20 mittees on Energy and Commerce, Resources, and Trans-  
21 portation and Infrastructure of the House of Representa-  
22 tives and the Committee on Energy and Natural Resources  
23 of the Senate a report on the findings, conclusions, and rec-  
24 ommendations of the study under this section by not later  
25 than 18 months after the date of the enactment of this Act.  
26 The report shall include each of the following:

1           (1) *The identifications, descriptions, and esti-*  
2           *mations referred to in subsection (b).*

3           (2) *A description of activities currently con-*  
4           *ducted or considered, or that could be considered, to*  
5           *produce additional hydroelectric power from each*  
6           *identified facility.*

7           (3) *A summary of prior actions taken by the*  
8           *Secretaries to produce additional hydroelectric power*  
9           *from each identified facility.*

10          (4) *The costs to install, upgrade, or modify*  
11          *equipment or take other actions to produce additional*  
12          *hydroelectric power from each identified facility and*  
13          *the level of Federal power customer involvement in the*  
14          *determination of such costs.*

15          (5) *The benefits that would be achieved by such*  
16          *installation, upgrade, modification, or other action,*  
17          *including quantified estimates of any additional en-*  
18          *ergy or capacity from each facility identified under*  
19          *subsection (b).*

20          (6) *A description of actions that are planned,*  
21          *underway, or might reasonably be considered to in-*  
22          *crease hydroelectric power production by replacing*  
23          *turbine runners, by performing generator upgrades or*  
24          *rewinds, or construction of pumped storage facilities.*

1           (7) *The impact of increased hydroelectric power*  
 2           *production on irrigation, fish, wildlife, Indian tribes,*  
 3           *river health, water quality, navigation, recreation,*  
 4           *fishing, and flood control.*

5           (8) *Any additional recommendations to increase*  
 6           *hydroelectric power production from, and reduce costs*  
 7           *and improve efficiency at, federally owned or oper-*  
 8           *ated water regulation, storage, and conveyance facili-*  
 9           *ties.*

10 **SEC. 245. SHIFT OF PROJECT LOADS TO OFF-PEAK PERI-**  
 11 **ODS.**

12           (a) *IN GENERAL.*—*The Secretary of the Interior*  
 13 *shall—*

14                   (1) *review electric power consumption by Bureau*  
 15                   *of Reclamation facilities for water pumping purposes;*  
 16                   *and*

17                   (2) *make such adjustments in such pumping as*  
 18                   *possible to minimize the amount of electric power*  
 19                   *consumed for such pumping during periods of peak*  
 20                   *electric power consumption, including by performing*  
 21                   *as much of such pumping as possible during off-peak*  
 22                   *hours at night.*

23           (b) *CONSENT OF AFFECTED IRRIGATION CUSTOMERS*  
 24 *REQUIRED.*—*The Secretary may not under this section*  
 25 *make any adjustment in pumping at a facility without the*

1 consent of each person that has contracted with the United  
 2 States for delivery of water from the facility for use for irri-  
 3 gation and that would be affected by such adjustment.

4 (c) *EXISTING OBLIGATIONS NOT AFFECTED.*—This sec-  
 5 tion shall not be construed to affect any existing obligation  
 6 of the Secretary to provide electric power, water, or other  
 7 benefits from Bureau of Reclamation facilities, including  
 8 recreational releases.

9 ***TITLE III—OIL AND GAS***  
 10 ***Subtitle A—Petroleum Reserve and***  
 11 ***Home Heating Oil***

12 ***SEC. 301. PERMANENT AUTHORITY TO OPERATE THE STRA-***  
 13 ***TEGIC PETROLEUM RESERVE AND OTHER EN-***  
 14 ***ERGY PROGRAMS.***

15 (a) *AMENDMENT TO TITLE I OF THE ENERGY POLICY*  
 16 *AND CONSERVATION ACT.*—Title I of the Energy Policy and  
 17 Conservation Act (42 U.S.C. 6211 et seq.) is amended—

18 (1) by striking section 166 (42 U.S.C. 6246) and  
 19 inserting the following:

20 “AUTHORIZATION OF APPROPRIATIONS

21 “SEC. 166. There are authorized to be appropriated  
 22 to the Secretary such sums as may be necessary to carry  
 23 out this part and part D, to remain available until ex-  
 24 pended.”;

25 (2) by striking section 186 (42 U.S.C. 6250e);  
 26 and



1           (3) *by striking part E (42 U.S.C. 6251; relating*  
 2           *to the expiration of title I of the Act).*

3           (b) *AMENDMENT TO TITLE II OF THE ENERGY POLICY*  
 4           *AND CONSERVATION ACT.—Title II of the Energy Policy*  
 5           *and Conservation Act (42 U.S.C. 6271 et seq.) is amend-*  
 6           *ed—*

7           (1) *by inserting before section 273 (42 U.S.C.*  
 8           *6283) the following:*

9           **“PART C—SUMMER FILL AND FUEL BUDGETING**  
 10           **PROGRAMS”;**

11           (2) *by striking section 273(e) (42 U.S.C. 6283(e);*  
 12           *relating to the expiration of summer fill and fuel*  
 13           *budgeting programs); and*

14           (3) *by striking part D (42 U.S.C. 6285; relating*  
 15           *to the expiration of title II of the Act).*

16           (c) *TECHNICAL AMENDMENTS.—The table of contents*  
 17           *for the Energy Policy and Conservation Act is amended—*

18           (1) *by amending part D of title I to read as fol-*  
 19           *lows:*

                  “PART D—NORTHEAST HOME HEATING OIL RESERVE

                  “Sec. 181. Establishment.

                  “Sec. 182. Authority.

                  “Sec. 183. Conditions for release; plan.

                  “Sec. 184. Northeast Home Heating Oil Reserve Account.

                  “Sec. 185. Exemptions.”;

20           (2) *by amending the items relating to part C of*  
 21           *title II to read as follows:*

“PART C—SUMMER FILL AND FUEL BUDGETING PROGRAMS

“Sec. 273. Summer fill and fuel budgeting programs.”

1           (3) *by striking the items relating to part D of*  
2           *title II.*

3           (d) *AMENDMENT TO THE ENERGY POLICY AND CON-*  
4           *SERVATION ACT.—Section 183(b)(1) of the Energy Policy*  
5           *and Conservation Act (42 U.S.C. 6250(b)(1)) is amended*  
6           *by striking all after “increases” through “mid-October*  
7           *through March” and inserting “by more than 60 percent*  
8           *over its 5-year rolling average for the months of mid-Octo-*  
9           *ber through March (considered as a heating season aver-*  
10          *age)”.*

11          (e) *FILL STRATEGIC PETROLEUM RESERVE TO CAPAC-*  
12          *ITY.—The Secretary of Energy shall, as expeditiously as*  
13          *practicable, acquire petroleum in amounts sufficient to fill*  
14          *the Strategic Petroleum Reserve to the 1,000,000,000 barrel*  
15          *capacity authorized under section 154(a) of the Energy Pol-*  
16          *icy and Conservation Act (42 U.S.C. 6234(a)), consistent*  
17          *with the provisions of sections 159 and 160 of such Act (42*  
18          *U.S.C. 6239, 6240).*

19   **SEC. 302. NATIONAL OILHEAT RESEARCH ALLIANCE.**

20          *Section 713 of the Energy Act of 2000 (42 U.S.C. 6201*  
21          *note) is amended by striking “4” and inserting “9”.*

22   **SEC. 303. SITE SELECTION.**

23          *Not later than 1 year after the date of enactment of*  
24          *this Act, the Secretary of Energy shall complete a pro-*

1 *ceeding to select, from sites that the Secretary has pre-*  
 2 *viously studied, sites necessary to enable acquisition by the*  
 3 *Secretary of the full authorized volume of the Strategic Pe-*  
 4 *troleum Reserve.*

5 **SEC. 304. SUSPENSION OF STRATEGIC PETROLEUM RE-**  
 6 **SERVE DELIVERIES.**

7 *The Secretary of Energy shall suspend deliveries of*  
 8 *royalty-in-kind oil to the Strategic Petroleum Reserve until*  
 9 *the price of oil falls below \$40 per barrel for 2 consecutive*  
 10 *weeks on the New York Mercantile Exchange.*

11 ***Subtitle B—Production Incentives***

12 **SEC. 320. LIQUEFACTION OR GASIFICATION NATURAL GAS**  
 13 **TERMINALS.**

14 *(a) SCOPE OF NATURAL GAS ACT.—Section 1(b) of the*  
 15 *Natural Gas Act (15 U.S.C. 717(b)) is amended by insert-*  
 16 *ing “and to the importation or exportation of natural gas*  
 17 *in foreign commerce and to persons engaged in such impor-*  
 18 *tation or exportation,” after “such transportation or sale,”.*

19 *(b) DEFINITION.—Section 2 of the Natural Gas Act (15*  
 20 *U.S.C. 717a) is amended by adding at the end the following*  
 21 *new paragraph:*

22 *“(11) ‘Liquefaction or gasification natural gas*  
 23 *terminal’ includes all facilities located onshore or in*  
 24 *State waters that are used to receive, unload, load,*  
 25 *store, transport, gasify, liquefy, or process natural gas*

1       *that is imported to the United States from a foreign*  
 2       *country, exported to a foreign country from the*  
 3       *United States, or transported in interstate commerce*  
 4       *by waterborne tanker, but does not include—*

5               “(A) *waterborne tankers used to deliver nat-*  
 6               *ural gas to or from any such facility; or*

7               “(B) *any pipeline or storage facility subject*  
 8               *to the jurisdiction of the Commission under sec-*  
 9               *tion 7.”.*

10       (c) *AUTHORIZATION FOR CONSTRUCTION, EXPANSION,*  
 11       *OR OPERATION OF LIQUEFACTION OR GASIFICATION NAT-*  
 12       *URAL GAS TERMINALS.—(1) The title for section 3 of the*  
 13       *Natural Gas Act (15 U.S.C. 717b) is amended by inserting*  
 14       *“; LIQUEFACTION OR GASIFICATION NATURAL GAS TERMI-*  
 15       *NALS” after “EXPORTATION OR IMPORTATION OF NATURAL*  
 16       *GAS”.*

17       (2) *Section 3 of the Natural Gas Act (15 U.S.C. 717b)*  
 18       *is amended by adding at the end the following:*

19               “(d) *AUTHORIZATION FOR CONSTRUCTION, EXPAN-*  
 20               *SION, OR OPERATION OF LIQUEFACTION OR GASIFICATION*  
 21               *NATURAL GAS TERMINALS.—*

22               “(1) *COMMISSION AUTHORIZATION REQUIRED.—*  
 23       *No person shall construct, expand, or operate a lique-*  
 24       *faction or gasification natural gas terminal without*

1        *an order from the Commission authorizing such per-*  
 2        *son to do so.*

3                “(2) *AUTHORIZATION PROCEDURES.—*

4                “(A) *NOTICE AND HEARING.—Upon the fil-*  
 5                *ing of any application to construct, expand, or*  
 6                *operate a liquefaction or gasification natural gas*  
 7                *terminal, the Commission shall—*

8                        “(i) *set the matter for hearing;*

9                        “(ii) *give reasonable notice of the hear-*  
 10                        *ing to all interested persons, including the*  
 11                        *State commission of the State in which the*  
 12                        *liquefaction or gasification natural gas ter-*  
 13                        *minal is located;*

14                        “(iii) *decide the matter in accordance*  
 15                        *with this subsection; and*

16                        “(iv) *issue or deny the appropriate*  
 17                        *order accordingly.*

18                “(B) *DESIGNATION AS LEAD AGENCY.—*

19                        “(i) *IN GENERAL.—The Commission*  
 20                        *shall act as the lead agency for the purposes*  
 21                        *of coordinating all applicable Federal au-*  
 22                        *thorizations and for the purposes of com-*  
 23                        *plying with the National Environmental*  
 24                        *Policy Act of 1969 (42 U.S.C. 4312 et seq.)*

1           *for a liquefaction or gasification natural*  
 2           *gas terminal.*

3           “(ii) *OTHER AGENCIES.—Each Federal*  
 4           *agency considering an aspect of the con-*  
 5           *struction, expansion, or operation of a liq-*  
 6           *uefaction or gasification natural gas ter-*  
 7           *minal shall cooperate with the Commission*  
 8           *and comply with the deadlines established*  
 9           *by the Commission.*

10          “(C) *SCHEDULE.—*

11           “(i) *COMMISSION AUTHORITY TO SET*  
 12           *SCHEDULE.—The Commission shall estab-*  
 13           *lish a schedule for all Federal and State ad-*  
 14           *ministrative proceedings required under au-*  
 15           *thority of Federal law to construct, expand,*  
 16           *or operate a liquefaction or gasification*  
 17           *natural gas terminal. In establishing the*  
 18           *schedule, the Commission shall—*

19                   “(I) *ensure expeditious completion*  
 20                   *of all such proceedings; and*

21                   “(II) *accommodate the applicable*  
 22                   *schedules established by Federal law for*  
 23                   *such proceedings.*

24           “(ii) *FAILURE TO MEET SCHEDULE.—*  
 25           *If a Federal or State administrative agency*

1           *does not complete a proceeding for an ap-*  
2           *proval that is required before a person may*  
3           *construct, expand, or operate the lique-*  
4           *faction or gasification natural gas terminal,*  
5           *in accordance with the schedule established*  
6           *by the Commission under this subpara-*  
7           *graph, and if—*

8                     *“(I) a determination has been*  
9                     *made by the Court pursuant to section*  
10                    *19(d) that such delay is unreasonable;*  
11                    *and*

12                    *“(II) the agency has failed to act*  
13                    *on any remand by the Court within*  
14                    *the deadline set by the Court,*  
15                    *that approval may be conclusively presumed*  
16                    *by the Commission.*

17                    *“(D) EXCLUSIVE RECORD.—The Commis-*  
18                    *sion shall, with the cooperation of Federal and*  
19                    *State administrative agencies and officials,*  
20                    *maintain a complete consolidated record of all*  
21                    *decisions made or actions taken by the Commis-*  
22                    *sion or by a Federal administrative agency or*  
23                    *officer (or State administrative agency or officer*  
24                    *acting under delegated Federal authority) with*  
25                    *respect to the construction, expansion, or oper-*

1        *ation of a liquefaction or gasification natural*  
2        *gas terminal. Such record shall be the exclusive*  
3        *record for any Federal administrative proceeding*  
4        *that is an appeal or review of any such decision*  
5        *made or action taken.*

6                “(E) STATE AND LOCAL SAFETY CONSIDER-  
7        ATIONS.—

8                “(i) IN GENERAL.—*The Commission*  
9        *shall consult with the State commission of*  
10       *the State in which the liquefaction or gasifi-*  
11       *cation natural gas terminal is located re-*  
12       *garding State and local safety consider-*  
13       *ations prior to issuing an order pursuant to*  
14       *this subsection and consistent with the*  
15       *schedule established under subparagraph*  
16       *(C).*

17               “(ii) STATE SAFETY INSPECTIONS.—  
18       *The State commission of the State in which*  
19       *a liquefaction or gasification natural gas*  
20       *terminal is located may, after the terminal*  
21       *is operational, conduct safety inspections*  
22       *with respect to the liquefaction or gasifi-*  
23       *cation natural gas terminal if—*



1           “(I) the State commission pro-  
2           vides written notice to the Commission  
3           of its intention to do so; and

4           “(II) the inspections will be car-  
5           ried out in conformance with Federal  
6           regulations and guidelines.

7           *Enforcement of any safety violation discov-*  
8           *ered by a State commission pursuant to this*  
9           *clause shall be carried out by Federal offi-*  
10          *cials. The Commission shall take appro-*  
11          *priate action in response to a report of a*  
12          *violation not later than 90 days after receiv-*  
13          *ing such report.*

14          “(iii) *STATE AND LOCAL SAFETY CON-*  
15          *SIDERATIONS.—For the purposes of this*  
16          *subparagraph, State and local safety con-*  
17          *siderations include—*

18               “(I) the kind and use of the facil-  
19               ity;

20               “(II) the existing and projected  
21               population and demographic charac-  
22               teristics of the location;

23               “(III) the existing and proposed  
24               land use near the location;

1                   “(IV) the natural and physical  
2                   aspects of the location;

3                   “(V) the medical, law enforce-  
4                   ment, and fire prevention capabilities  
5                   near the location that can respond at  
6                   the facility; and

7                   “(VI) the feasibility of remote  
8                   siting.

9                   “(3) ISSUANCE OF COMMISSION ORDER.—

10                   “(A) IN GENERAL.—The Commission shall  
11                   issue an order authorizing, in whole or in part,  
12                   the construction, expansion, or operation covered  
13                   by the application to any qualified applicant—

14                   “(i) unless the Commission finds such  
15                   actions or operations will not be consistent  
16                   with the public interest; and

17                   “(ii) if the Commission has found that  
18                   the applicant is—

19                   “(I) able and willing to carry out  
20                   the actions and operations proposed;  
21                   and

22                   “(II) willing to conform to the  
23                   provisions of this Act and any require-  
24                   ments, rules, and regulations of the  
25                   Commission set forth under this Act.

1           “(B) *TERMS AND CONDITIONS.*—*The Com-*  
 2           *mission may by its order grant an application,*  
 3           *in whole or in part, with such modification and*  
 4           *upon such terms and conditions as the Commis-*  
 5           *sion may find necessary or appropriate.*

6           “(C) *LIMITATIONS ON TERMS AND CONDI-*  
 7           *TIONS TO COMMISSION ORDER.*—

8           “(i) *IN GENERAL.*—*Any Commission*  
 9           *order issued pursuant to this subsection be-*  
 10           *fore January 1, 2011, shall not be condi-*  
 11           *tioned on—*

12           “(I) *a requirement that the lique-*  
 13           *faction or gasification natural gas ter-*  
 14           *minal offer service to persons other*  
 15           *than the person, or any affiliate there-*  
 16           *of, securing the order; or*

17           “(II) *any regulation of the lique-*  
 18           *faction or gasification natural gas ter-*  
 19           *minal’s rates, charges, terms, or condi-*  
 20           *tions of service.*

21           “(ii) *INAPPLICABLE TO TERMINAL EXIT*  
 22           *PIPELINE.*—*Clause (i) shall not apply to*  
 23           *any pipeline subject to the jurisdiction of*  
 24           *the Commission under section 7 exiting a*

liquefaction or gasification natural gas terminal.

“(iii) *EXPANSION OF REGULATED TERMINAL.*—An order issued under this paragraph that relates to an expansion of an existing liquefaction or gasification natural gas terminal, where any portion of the existing terminal continues to be subject to Commission regulation of rates, charges, terms, or conditions of service, may not result in—

“(I) subsidization of the expansion by regulated terminal users;

“(II) degradation of service to the regulated terminal users; or

“(III) undue discrimination against the regulated terminal users.

“(iv) *EXPIRATION.*—This subparagraph shall cease to have effect on January 1, 2021.

“(4) *DEFINITION.*—For the purposes of this subsection, the term ‘Federal authorization’ means any authorization required under Federal law in order to construct, expand, or operate a liquefaction or gasification natural gas terminal, including such permits,

1       *special use authorizations, certifications, opinions, or*  
 2       *other approvals as may be required, whether issued by*  
 3       *a Federal or State agency.”.*

4       *(d) JUDICIAL REVIEW.—Section 19 of the Natural Gas*  
 5       *Act (15 U.S.C. 717r) is amended by adding at the end the*  
 6       *following:*

7       “(d) JUDICIAL REVIEW.—

8               “(1) IN GENERAL.—The United States Court of  
 9       *Appeals for the District of Columbia Circuit shall*  
 10       *have original and exclusive jurisdiction over any civil*  
 11       *action—*

12               “(A) *for review of any order, action, or fail-*  
 13       *ure to act of any Federal or State administrative*  
 14       *agency to issue, condition, or deny any permit,*  
 15       *license, concurrence, or approval required under*  
 16       *Federal law for the construction, expansion, or*  
 17       *operation of a liquefaction or gasification nat-*  
 18       *ural gas terminal;*

19               “(B) *alleging unreasonable delay, in meet-*  
 20       *ing a schedule established under section*  
 21       *3(d)(2)(C) or otherwise, by any Federal or State*  
 22       *administrative agency in entering an order or*  
 23       *taking other action described in subparagraph*  
 24       *(A); or*

1           “(C) *challenging any decision made or ac-*  
2           *tion taken by the Commission under section 3(d).*

3           “(2) *COMMISSION ACTION.—For any action de-*  
4           *scribed in this subsection, the Commission shall file*  
5           *with the Court the consolidated record maintained*  
6           *under section 3(d)(2)(D).*

7           “(3) *COURT ACTION.—If the Court finds under*  
8           *paragraph (1)(A) or (B) that an order, action, failure*  
9           *to act, or delay is inconsistent with applicable Fed-*  
10          *eral law, and would prevent the construction, expan-*  
11          *sion, or operation of a liquefaction or gasification*  
12          *natural gas terminal, the order or action shall be*  
13          *deemed to have been issued or taken, subject to any*  
14          *conditions established by the Federal or State admin-*  
15          *istrative agency upon remand from the Court, such*  
16          *conditions to be consistent with the order of the Court.*  
17          *If the Court remands the order or action to the Fed-*  
18          *eral or State agency, the Court shall set a reasonable*  
19          *deadline for the agency to act on remand.*

20          “(4) *UNREASONABLE DELAY.—For the purposes*  
21          *of paragraph (1)(B), the failure of an agency to issue*  
22          *a permit, license, concurrence, or approval within the*  
23          *later of—*

1           “(A) 1 year after the date of filing of an ap-  
 2           plication for the permit, license, concurrence, or  
 3           approval; or

4           “(B) 60 days after the date of issuance of  
 5           the order under section 3(d),  
 6           shall be considered unreasonable delay unless the  
 7           Court, for good cause shown, determines otherwise.

8           “(5) *EXPEDITED REVIEW*.—The Court shall set  
 9           any action brought under this subsection for expedited  
 10          consideration.”.

11 **SEC. 327. HYDRAULIC FRACTURING.**

12          Paragraph (1) of section 1421(d) of the Safe Drinking  
 13          Water Act (42 U.S.C. 300h(d)) is amended to read as fol-  
 14          lows:

15               “(1) *UNDERGROUND INJECTION*.—The term ‘un-  
 16               derground injection’—

17                       “(A) means the subsurface emplacement of  
 18                       fluids by well injection; and

19                       “(B) excludes—

20                               “(i) the underground injection of nat-  
 21                               ural gas for purposes of storage; and

22                               “(ii) the underground injection of  
 23                               fluids or propping agents pursuant to hy-  
 24                               draulic fracturing operations related to oil  
 25                               or gas production activities.”.

1 **SEC. 330. APPEALS RELATING TO PIPELINE CONSTRUCTION**  
2 **OR OFFSHORE MINERAL DEVELOPMENT**  
3 **PROJECTS.**

4 (a) *AGENCY OF RECORD, PIPELINE CONSTRUCTION*  
5 *PROJECTS.*—Any Federal administrative agency pro-  
6 ceeding that is an appeal or review under section 319 of  
7 the Coastal Zone Management Act of 1972 (16 U.S.C.  
8 1465), as amended by this Act, related to Federal authority  
9 for an interstate natural gas pipeline construction project,  
10 including construction of natural gas storage and liquefied  
11 natural gas facilities, shall use as its exclusive record for  
12 all purposes the record compiled by the Federal Energy Reg-  
13 ulatory Commission pursuant to the Commission's pro-  
14 ceeding under sections 3 and 7 of the Natural Gas Act (15  
15 U.S.C. 717b, 717f).

16 (b) *SENSE OF CONGRESS.*—It is the sense of Congress  
17 that all Federal and State agencies with jurisdiction over  
18 interstate natural gas pipeline construction activities  
19 should coordinate their proceedings within the timeframes  
20 established by the Federal Energy Regulatory Commission  
21 when the Commission is acting under sections 3 and 7 of  
22 the Natural Gas Act (15 U.S.C. 717b, 717f) to determine  
23 whether a certificate of public convenience and necessity  
24 should be issued for a proposed interstate natural gas pipe-  
25 line.



1       (c) *AGENCY OF RECORD, OFFSHORE MINERAL DEVEL-*  
 2 *OPMENT PROJECTS.*—Any Federal administrative agency  
 3 *proceeding that is an appeal or review under section 319*  
 4 *of the Coastal Zone Management Act of 1972 (16 U.S.C.*  
 5 *1465), as amended by this Act, related to Federal authority*  
 6 *for the permitting, approval, or other authorization of en-*  
 7 *ergy projects, including projects to explore, develop, or*  
 8 *produce mineral resources in or underlying the outer Conti-*  
 9 *ental Shelf shall use as its exclusive record for all purposes*  
 10 *(except for the filing of pleadings) the record compiled by*  
 11 *the relevant Federal permitting agency.*

12 **SEC. 333. NATURAL GAS MARKET TRANSPARENCY.**

13       *The Natural Gas Act (15 U.S.C 717 et seq.) is amend-*  
 14 *ed—*

15               (1) *by redesignating section 24 as section 25;*

16       *and*

17               (2) *by inserting after section 23 the following:*

18 **“SEC. 24. NATURAL GAS MARKET TRANSPARENCY.**

19       “(a) *AUTHORIZATION.*—(1) *Not later than 180 days*  
 20 *after the date of enactment of the Energy Policy Act of*  
 21 *2005, the Federal Energy Regulatory Commission shall*  
 22 *issue rules directing all entities subject to the Commission’s*  
 23 *jurisdiction as provided under this Act to timely report in-*  
 24 *formation about the availability and prices of natural gas*

1 *sold at wholesale in interstate commerce to the Commission*  
2 *and price publishers.*

3       “(2) *The Commission shall evaluate the data for ade-*  
4 *quate price transparency and accuracy.*

5       “(3) *Rules issued under this subsection requiring the*  
6 *reporting of information to the Commission that may be-*  
7 *come publicly available shall be limited to aggregate data*  
8 *and transaction-specific data that are otherwise required*  
9 *by the Commission to be made public.*

10       “(4) *In exercising its authority under this section, the*  
11 *Commission shall not—*

12               “(A) *compete with, or displace from the market*  
13 *place, any price publisher; or*

14               “(B) *regulate price publishers or impose any re-*  
15 *quirements on the publication of information.*

16       “(b) *TIMELY ENFORCEMENT.—No person shall be sub-*  
17 *ject to any penalty under this section with respect to a vio-*  
18 *lation occurring more than 3 years before the date on which*  
19 *the Federal Energy Regulatory Commission seeks to assess*  
20 *a penalty.*

21       “(c) *LIMITATION ON COMMISSION AUTHORITY.—(1)*  
22 *The Commission shall not condition access to interstate*  
23 *pipeline transportation upon the reporting requirements*  
24 *authorized under this section.*

1       “(2) *Natural gas sales by a producer that are attrib-*  
 2       *utable to volumes of natural gas produced by such producer*  
 3       *shall not be subject to the rules issued pursuant to this sec-*  
 4       *tion.*

5       “(3) *The Commission shall not require natural gas*  
 6       *producers, processors, or users who have a de minimis mar-*  
 7       *ket presence to participate in the reporting requirements*  
 8       *provided in this section.”.*

## 9       ***Subtitle C—Access to Federal Land***

### 10       ***SEC. 344. CONSULTATION REGARDING OIL AND GAS LEAS-*** 11       ***ING ON PUBLIC LAND.***

12       *(a) IN GENERAL.—Not later than 180 days after the*  
 13       *date of enactment of this Act, the Secretary of the Interior*  
 14       *and the Secretary of Agriculture shall enter into a memo-*  
 15       *randum of understanding regarding oil and gas leasing*  
 16       *on—*

17               *(1) public lands under the jurisdiction of the*  
 18       *Secretary of the Interior; and*

19               *(2) National Forest System lands under the ju-*  
 20       *risdiction of the Secretary of Agriculture.*

21       *(b) CONTENTS.—The memorandum of understanding*  
 22       *shall include provisions that—*

23               *(1) establish administrative procedures and lines*  
 24       *of authority that ensure timely processing of oil and*  
 25       *gas lease applications, surface use plans of operation,*

1       *and applications for permits to drill, including steps*  
2       *for processing surface use plans and applications for*  
3       *permits to drill consistent with the timelines estab-*  
4       *lished by the amendment made by section 348;*

5               *(2) eliminate duplication of effort by providing*  
6       *for coordination of planning and environmental com-*  
7       *pliance efforts; and*

8               *(3) ensure that lease stipulations are—*

9                       *(A) applied consistently;*

10                      *(B) coordinated between agencies; and*

11                      *(C) only as restrictive as necessary to pro-*  
12       *tect the resource for which the stipulations are*  
13       *applied.*

14       *(c) DATA RETRIEVAL SYSTEM.—*

15               *(1) IN GENERAL.—Not later than 1 year after*  
16       *the date of enactment of this Act, the Secretary of the*  
17       *Interior and the Secretary of Agriculture shall estab-*  
18       *lish a joint data retrieval system that is capable of—*

19                      *(A) tracking applications and formal re-*  
20       *quests made in accordance with procedures of the*  
21       *Federal onshore oil and gas leasing program;*  
22       *and*

23                      *(B) providing information regarding the*  
24       *status of the applications and requests within the*

1           *Department of the Interior and the Department*  
 2           *of Agriculture.*

3           (2) *RESOURCE MAPPING.*—*Not later than 2 years*  
 4           *after the date of enactment of this Act, the Secretary*  
 5           *of the Interior and the Secretary of Agriculture shall*  
 6           *establish a joint Geographic Information System*  
 7           *mapping system for use in—*

8                     (A) *tracking surface resource values to aid*  
 9                     *in resource management; and*

10                    (B) *processing surface use plans of oper-*  
 11                    *ation and applications for permits to drill.*

12 **SEC. 346. COMPLIANCE WITH EXECUTIVE ORDER 13211; AC-**  
 13                    **TIONS CONCERNING REGULATIONS THAT**  
 14                    **SIGNIFICANTLY AFFECT ENERGY SUPPLY,**  
 15                    **DISTRIBUTION, OR USE.**

16           (a) *REQUIREMENT.*—*The head of each Federal agency*  
 17           *shall require that before the Federal agency takes any action*  
 18           *that could have a significant adverse effect on the supply*  
 19           *of domestic energy resources from Federal public land, the*  
 20           *Federal agency taking the action shall comply with Execu-*  
 21           *tive Order No. 13211 (42 U.S.C. 13201 note).*

22           (b) *GUIDANCE.*—*Not later than 180 days after the date*  
 23           *of enactment of this Act, the Secretary of Energy shall pub-*  
 24           *lish guidance for purposes of this section describing what*  
 25           *constitutes a significant adverse effect on the supply of do-*

1 *mestic energy resources under Executive Order No. 13211*  
 2 *(42 U.S.C. 13201 note).*

3 *(c) MEMORANDUM OF UNDERSTANDING.—The Sec-*  
 4 *retary of the Interior and the Secretary of Agriculture shall*  
 5 *include in the memorandum of understanding under section*  
 6 *344 provisions for implementing subsection (a) of this sec-*  
 7 *tion.*

8 **SEC. 350. ENERGY FACILITY RIGHTS-OF-WAY AND COR-**  
 9 **RIDORS ON FEDERAL LAND.**

10 *(a) REPORT TO CONGRESS.—*

11 *(1) IN GENERAL.—Not later than 1 year after*  
 12 *the date of enactment of this Act, the Secretary of Ag-*  
 13 *riculture and the Secretary of the Interior, in con-*  
 14 *sultation with the Secretary of Commerce, the Sec-*  
 15 *retary of Defense, the Secretary of Energy, and the*  
 16 *Federal Energy Regulatory Commission, shall submit*  
 17 *to Congress a joint report—*

18 *(A) that addresses—*

19 *(i) the location of existing rights-of-*  
 20 *way and designated and de facto corridors*  
 21 *for oil and gas pipelines and electric trans-*  
 22 *mission and distribution facilities on Fed-*  
 23 *eral land; and*

24 *(ii) opportunities for additional oil*  
 25 *and gas pipeline and electric transmission*

1                   *capacity within those rights-of-way and cor-*  
 2                   *ridors; and*

3                   *(B) that includes a plan for making avail-*  
 4                   *able, on request, to the appropriate Federal,*  
 5                   *State, and local agencies, tribal governments,*  
 6                   *and other persons involved in the siting of oil*  
 7                   *and gas pipelines and electricity transmission*  
 8                   *facilities Geographic Information System-based*  
 9                   *information regarding the location of the exist-*  
 10                   *ing rights-of-way and corridors and any planned*  
 11                   *rights-of-way and corridors.*

12                   *(2) CONSULTATIONS AND CONSIDERATIONS.—In*  
 13                   *preparing the report, the Secretary of the Interior*  
 14                   *and the Secretary of Agriculture shall consult with—*

15                   *(A) other agencies of Federal, State, tribal,*  
 16                   *or local units of government, as appropriate;*

17                   *(B) persons involved in the siting of oil and*  
 18                   *gas pipelines and electric transmission facilities;*  
 19                   *and*

20                   *(C) other interested members of the public.*

21                   *(3) LIMITATION.—The Secretary of the Interior*  
 22                   *and the Secretary of Agriculture shall limit the dis-*  
 23                   *tribution of the report and Geographic Information*  
 24                   *System-based information referred to in paragraph*  
 25                   *(1) as necessary for national and infrastructure secu-*

1        *city reasons, if either Secretary determines that the*  
 2        *information may be withheld from public disclosure*  
 3        *under a national security or other exception under*  
 4        *section 552(b) of title 5, United States Code.*

5        *(b) CORRIDOR DESIGNATIONS.—*

6            *(1) 11 CONTIGUOUS WESTERN STATES.—Not*  
 7        *later than 2 years after the date of enactment of this*  
 8        *Act, the Secretary of Agriculture, the Secretary of*  
 9        *Commerce, the Secretary of Defense, the Secretary of*  
 10       *Energy, and the Secretary of the Interior, in con-*  
 11       *sultation with the Federal Energy Regulatory Com-*  
 12       *mission and the affected utility industries, shall joint-*  
 13       *ly—*

14            *(A) designate, under title V of the Federal*  
 15        *Land Policy and Management Act of 1976 (43*  
 16        *U.S.C. 1761 et seq.) and other applicable Federal*  
 17        *laws, corridors for oil and gas pipelines and elec-*  
 18        *tricity transmission and facilities on Federal*  
 19        *land in the eleven contiguous Western States (as*  
 20        *defined in section 103 of the Federal Land Pol-*  
 21        *icy and Management Act of 1976 (43 U.S.C.*  
 22        *1702));*

23            *(B) perform any environmental reviews*  
 24        *that may be required to complete the designa-*  
 25        *tions of corridors for the facilities on Federal*



1           *land in the eleven contiguous Western States;*  
2           *and*

3           *(C) incorporate the designated corridors*  
4           *into—*

5                     *(i) the relevant departmental and*  
6                     *agency land use and resource management*  
7                     *plans; or*

8                     *(ii) equivalent plans.*

9           *(2) OTHER STATES.—Not later than 4 years*  
10          *after the date of enactment of this Act, the Secretary*  
11          *of Agriculture, the Secretary of Commerce, the Sec-*  
12          *retary of Defense, the Secretary of Energy, and the*  
13          *Secretary of the Interior, in consultation with the*  
14          *Federal Energy Regulatory Commission and the af-*  
15          *ected utility industries, shall jointly—*

16                    *(A) identify corridors for oil and gas pipe-*  
17                    *lines and electricity transmission and distribu-*  
18                    *tion facilities on Federal land in the States other*  
19                    *than those described in paragraph (1); and*

20                    *(B) schedule prompt action to identify, des-*  
21                    *ignate, and incorporate the corridors into the*  
22                    *land use plan.*

23           *(3) ONGOING RESPONSIBILITIES.—The Secretary*  
24          *of Agriculture, the Secretary of Commerce, the Sec-*  
25          *retary of Defense, the Secretary of Energy, and the*

1       *Secretary of the Interior, with respect to lands under*  
2       *their respective jurisdictions, in consultation with the*  
3       *Federal Energy Regulatory Commission and the af-*  
4       *ected utility industries, shall establish procedures*  
5       *that—*

6               *(A) ensure that additional corridors for oil*  
7               *and gas pipelines and electricity transmission*  
8               *and distribution facilities on Federal land are*  
9               *promptly identified and designated; and*

10              *(B) expedite applications to construct or*  
11              *modify oil and gas pipelines and electricity*  
12              *transmission and distribution facilities within*  
13              *the corridors, taking into account prior analyses*  
14              *and environmental reviews undertaken during*  
15              *the designation of corridors.*

16       *(c) CONSIDERATIONS.—In carrying out this section,*  
17       *the Secretaries shall take into account the need for upgraded*  
18       *and new electricity transmission and distribution facilities*  
19       *to—*

20              *(1) improve reliability;*

21              *(2) relieve congestion; and*

22              *(3) enhance the capability of the national grid to*  
23       *deliver electricity.*

24       *(d) DEFINITION OF CORRIDOR.—*

1           (1) *IN GENERAL.*—*In this section and title V of*  
2           *the Federal Land Policy and Management Act of*  
3           *1976 (43 U.S.C. 1761 et seq.), the term “corridor”*  
4           *means—*

5                     (A) *a linear strip of land—*

6                             (i) *with a width determined with con-*  
7                             *sideration given to technological, environ-*  
8                             *mental, and topographical factors; and*

9                             (ii) *that contains, or may in the future*  
10                            *contain, 1 or more utility, communication,*  
11                            *or transportation facilities;*

12                    (B) *a land use designation that is estab-*  
13                    *lished—*

14                             (i) *by law;*

15                             (ii) *by Secretarial Order;*

16                             (iii) *through the land use planning*  
17                            *process; or*

18                             (iv) *by other management decision;*

19                            *and*

20                    (C) *a designation made for the purpose of*  
21                    *establishing the preferred location of compatible*  
22                    *linear facilities and land uses.*

23           (2) *SPECIFICATIONS OF CORRIDOR.*—*On designa-*  
24           *tion of a corridor under this section, the centerline,*

5 Congress encourages no Federal or State permit or  
6 lease to be issued for new oil and gas slant, directional,  
7 or offshore drilling in or under one or more of the Great  
8 Lakes.

10           *Any State currently on the list of Affected States estab-*  
11 *lished under section 1339(b) of the Energy Policy Act of*  
12 *1992 (42 U.S.C. 13368(b)) shall be removed from the list*  
13 *if, not later than 3 years after the date of enactment of*  
14 *this Act, the State takes, or prior to the date of enactment*  
15 *has taken, any of the actions required for removal from the*  
16 *list under such section 1339(b).*

19        *This subtitle may be cited as the “United States Refin-*  
20 *ery Revitalization Act of 2005”.*

22 Congress finds the following:

(1) *It serves the national interest to increase petroleum refining capacity for gasoline, heating oil, diesel fuel, jet fuel, kerosene, and petrochemical feed-*

1        *stocks wherever located within the United States, to*  
2        *bring more supply to the markets for use by the*  
3        *American people. Nearly 50 percent of the petroleum*  
4        *in the United States is used for the production of gas-*  
5        *oline. Refined petroleum products have a significant*  
6        *impact on interstate commerce.*

7            *(2) United States demand for refined petroleum*  
8        *products currently exceeds the country's petroleum re-*  
9        *fining capacity to produce such products. By 2025,*  
10       *United States gasoline consumption is projected to*  
11       *rise from 8,900,000 barrels per day to 12,900,000*  
12       *barrels per day. Diesel fuel and home heating oil are*  
13       *becoming larger components of an increasing demand*  
14       *for refined petroleum supply. With the increase in air*  
15       *travel, jet fuel consumption is projected to be 789,000*  
16       *barrels per day higher in 2025 than today.*

17           *(3) The petroleum refining industry is operating*  
18       *at 95 percent of capacity. The United States is cur-*  
19       *rently importing 5 percent of its refined petroleum*  
20       *products and because of the stringent United States*  
21       *gasoline and diesel fuel specifications, few foreign re-*  
22       *finers can produce the clean fuels required in the*  
23       *United States and the number of foreign suppliers*  
24       *that can produce United States quality gasoline is de-*  
25       *creasing.*

1           (4) Refiners are subject to significant environ-  
2           mental and other regulations and face several new  
3           Clean Air Act requirements over the next decade. New  
4           Clean Air Act requirements will benefit the environ-  
5           ment but will also require substantial capital invest-  
6           ment and additional government permits.

7           (5) No new refinery has been built in the United  
8           States since 1976 and many smaller domestic refin-  
9           eries have become idle since the removal of the Domes-  
10          tic Crude Oil Allocation Program and because of reg-  
11          ulatory uncertainty and generally low returns on  
12          capital employed. Today, the United States has 149  
13          refineries, down from 324 in 1981. Restoration of re-  
14          cently idled refineries alone would amount to 483,570  
15          barrels a day in additional capacity, or approxi-  
16          mately 3.3 percent of the total operating capacity.

17          (6) Refiners have met growing demand by in-  
18          creasing the use of existing equipment and increasing  
19          the efficiency and capacity of existing plants. But re-  
20          fining capacity has begun to lag behind peak summer  
21          demand.

22          (7) Heavy industry and manufacturing jobs  
23          have closed or relocated due to barriers to investment,  
24          burdensome regulation, and high costs of operation,  
25          among other reasons.

1           (8) *Because the production and disruption in*  
2           *supply of refined petroleum products has a significant*  
3           *impact on interstate commerce, it serves the national*  
4           *interest to increase the domestic refining operating*  
5           *capacity.*

6           (10) *More regulatory certainty for refinery own-*  
7           *ers is needed to stimulate investment in increased re-*  
8           *finery capacity and required procedures for Federal,*  
9           *State, and local regulatory approvals need to be*  
10          *streamlined to ensure that increased refinery capacity*  
11          *can be developed and operated in a safe, timely, and*  
12          *cost-effective manner.*

13          (11) *The proposed Yuma Arizona Refinery, a*  
14          *grassroots refinery facility, which only recently re-*  
15          *ceived its Federal air quality permit after 5 years*  
16          *under the current regulatory process, and is just now*  
17          *beginning its environmental impact statement and*  
18          *local permitting process, serves as an example of the*  
19          *obstacles a refiner would have to overcome to reopen*  
20          *an idle refinery.*

21   **SEC. 373. PURPOSE.**

22          *The purpose of this subtitle is to encourage the expan-*  
23          *sion of the United States refining capacity by providing*  
24          *an accelerated review and approval process of all regulatory*  
25          *approvals for certain idle refineries and lending cor-*

1 *responding legal and technical assistance to States with re-*  
 2 *sources that may be inadequate to meet such permit review*  
 3 *demands.*

4 **SEC. 374. DESIGNATION OF REFINERY REVITALIZATION**  
 5 **ZONES.**

6 *Not later than 90 days after the date of enactment of*  
 7 *this Act, the Secretary shall designate as a Refinery Revi-*  
 8 *talization Zone any area—*

9 *(1) that—*

10 *(A) has experienced mass layoffs at manu-*  
 11 *facturing facilities, as determined by the Sec-*  
 12 *retary of Labor; or*

13 *(B) contains an idle refinery; and*

14 *(2) that has an unemployment rate that exceeds*  
 15 *the national average by at least 10 percent of the na-*  
 16 *tional average, as set by the Department of Labor,*  
 17 *Bureau of Labor Statistics, at the time of the designa-*  
 18 *tion as a Refinery Revitalization Zone.*

19 **SEC. 375. MEMORANDUM OF UNDERSTANDING.**

20 *(a) IN GENERAL.—Not later than 90 days after the*  
 21 *date of enactment of this Act, the Secretary shall enter into*  
 22 *a memorandum of understanding with the Administrator*  
 23 *for the purposes of this subtitle. The Secretary and the Ad-*  
 24 *ministrator shall each designate a senior official responsible*  
 25 *for, and dedicate sufficient other staff and resources to en-*



1 *sure, full implementation of the purposes of this subtitle and*  
 2 *any regulations enacted pursuant to this subtitle.*

3 *(b) ADDITIONAL SIGNATORIES.—The Governor of any*  
 4 *State, and the appropriate representative of any Indian*  
 5 *Tribe, with jurisdiction over a Refinery Revitalization*  
 6 *Zone, as designated by the Secretary pursuant to section*  
 7 *374, may be signatories to the memorandum of under-*  
 8 *standing under this section.*

9 **SEC. 376. STATE ENVIRONMENTAL PERMITTING ASSIST-**  
 10 **ANCE.**

11 *Not later than 30 days after a Revitalization Program*  
 12 *Qualifying State becomes a signatory to the memorandum*  
 13 *of understanding under section 375(b)—*

14 *(1) the Secretary shall designate one or more em-*  
 15 *ployees of the Department with expertise relating to*  
 16 *the siting and operation of refineries to provide legal*  
 17 *and technical assistance to that Revitalization Pro-*  
 18 *gram Qualifying State; and*

19 *(2) the Administrator shall designate, to provide*  
 20 *legal and technical assistance for that Revitalization*  
 21 *Program Qualifying State, one or more employees of*  
 22 *the Environmental Protection Agency with expertise*  
 23 *on regulatory issues, relating to the siting and oper-*  
 24 *ation of refineries, with respect to each of—*

1                   (A) *the Clean Air Act (42 U.S.C. 7401 et*  
2                   *seq.)*;

3                   (B) *the Federal Water Pollution Control Act*  
4                   *(33 U.S.C. 1251 et seq.)*;

5                   (C) *the Safe Drinking Water Act (42 U.S.C.*  
6                   *300f et seq.)*;

7                   (D) *the Comprehensive Environmental Re-*  
8                   *sponse, Compensation, and Liability Act of 1980*  
9                   *(42 U.S.C. 9601 et seq.)*;

10                  (E) *the Solid Waste Disposal Act (42*  
11                  *U.S.C. 6901 et seq.)*;

12                  (F) *the Toxic Substances Control Act (15*  
13                  *U.S.C. 2601 et seq.)*;

14                  (G) *the National Historic Preservation Act*  
15                  *(16 U.S.C. 470 et seq.)*; and

16                  (H) *the National Environmental Policy Act*  
17                  *of 1969 (42 U.S.C. 4321 et seq.)*.

18 **SEC. 377. COORDINATION AND EXPEDITIOUS REVIEW OF**  
19 **PERMITTING PROCESS.**

20           (a) *DEPARTMENT OF ENERGY AS LEAD AGENCY.—*  
21 *Upon written request of a prospective applicant for Federal*  
22 *authorization for a refinery facility in a Refinery Revital-*  
23 *ization Zone, the Department shall act as the lead Federal*  
24 *agency for the purposes of coordinating all applicable Fed-*  
25 *eral authorizations and environmental reviews of the refin-*

1 *ing facility. To the maximum extent practicable under ap-*  
2 *plicable Federal law, the Secretary shall coordinate this*  
3 *Federal authorization and review process with any Indian*  
4 *Tribes and State and local agencies responsible for con-*  
5 *ducting any separate permitting and environmental re-*  
6 *views of the refining facility.*

7 (b) *SCHEDULE.—*

8 (1) *IN GENERAL.—The Secretary, in coordina-*  
9 *tion with the agencies with authority over Federal*  
10 *authorizations and, as appropriate, with Indian*  
11 *Tribes and State and local agencies that are willing*  
12 *to coordinate their separate permitting and environ-*  
13 *mental reviews with the Federal authorizations and*  
14 *environmental reviews, shall establish a schedule with*  
15 *prompt and binding intermediate and ultimate dead-*  
16 *lines for the review of, and Federal authorization de-*  
17 *cisions relating to, refinery facility siting and oper-*  
18 *ation.*

19 (2) *PREAPPLICATION PROCESS.—Prior to estab-*  
20 *lishing the schedule, the Secretary shall provide an*  
21 *expeditious preapplication mechanism for applicants*  
22 *to confer with the agencies involved and to have each*  
23 *agency communicate to the prospective applicant*  
24 *within 60 days concerning—*

1           (A) the likelihood of approval for a poten-  
2           tial refinery facility; and

3           (B) key issues of concern to the agencies and  
4           local community.

5           (3) *SCHEDULE.*—The Secretary shall consider  
6           the preapplication findings under paragraph (2) in  
7           setting the schedule and shall ensure that once an ap-  
8           plication has been submitted with such information  
9           as the Secretary considers necessary, all permit deci-  
10          sions and related environmental reviews under all ap-  
11          plicable Federal laws shall be completed within 6  
12          months or, where circumstances require otherwise, as  
13          soon as thereafter practicable.

14          (c) *CONSOLIDATED ENVIRONMENTAL REVIEW.*—

15               (1) *LEAD AGENCY.*—In carrying out its role as  
16               the lead Federal agency for environmental review, the  
17               Department shall coordinate all applicable Federal  
18               actions for complying with the National Environ-  
19               mental Policy Act of 1969 (42 U.S.C. 4321 et seq.)  
20               and shall be responsible for preparing any environ-  
21               mental impact statement required by section  
22               102(2)(C) of that Act (42 U.S.C. 4332(2)(C)) or such  
23               other form of environmental review as is required.

24               (2) *CONSOLIDATION OF STATEMENTS.*—In car-  
25               rying out paragraph (1), if the Department deter-

1        *mines an environmental impact statement is re-*  
2        *quired, the Department shall prepare a single envi-*  
3        *ronmental impact statement, which shall consolidate*  
4        *the environmental reviews of all Federal agencies con-*  
5        *sidering any aspect of the project covered by the envi-*  
6        *ronmental impact statement.*

7        *(d) OTHER AGENCIES.—Each Federal agency consid-*  
8        *ering an aspect of the siting or operation of a refinery facil-*  
9        *ity in a Refinery Revitalization Zone shall cooperate with*  
10       *the Department and comply with the deadlines established*  
11       *by the Department in the preparation of any environmental*  
12       *impact statement or such other form of review as is re-*  
13       *quired.*

14       *(e) EXCLUSIVE RECORD.—The Department shall, with*  
15       *the cooperation of Federal and State administrative agen-*  
16       *cies and officials, maintain a complete consolidated record*  
17       *of all decisions made or actions taken by the Department*  
18       *or by a Federal administrative agency or officer (or State*  
19       *administrative agency or officer acting under delegated*  
20       *Federal authority) with respect to the siting or operation*  
21       *of a refinery facility in a Refinery Revitalization Zone.*  
22       *Such record shall be the exclusive record for any Federal*  
23       *administrative proceeding that is an appeal or review of*  
24       *any such decision made or action taken.*

1       (f) *APPEALS.*—*In the event any agency has denied a*  
2 *Federal authorization required for a refinery facility in a*  
3 *Refinery Revitalization Zone, or has failed to act by a*  
4 *deadline established by the Secretary pursuant to subsection*  
5 *(b) for deciding whether to issue the Federal authorization,*  
6 *the applicant or any State in which the refinery facility*  
7 *would be located may file an appeal with the Secretary.*  
8 *Based on the record maintained under subsection (e), and*  
9 *in consultation with the affected agency, the Secretary may*  
10 *then either issue the necessary Federal authorization with*  
11 *appropriate conditions, or deny the appeal. The Secretary*  
12 *shall issue a decision within 60 days after the filing of the*  
13 *appeal. In making a decision under this subsection, the Sec-*  
14 *retary shall comply with applicable requirements of Federal*  
15 *law, including each of the laws referred to in section*  
16 *376(2)(A) through (H). Any judicial appeal of the Sec-*  
17 *retary's decision shall be to the United States Court of Ap-*  
18 *peals for the District of Columbia.*

19       (g) *CONFORMING REGULATIONS.*—*Not later than 6*  
20 *months after the date of enactment of this Act, the Secretary*  
21 *shall issue any regulations necessary to implement this sub-*  
22 *title.*

1 **SEC. 378. COMPLIANCE WITH ALL ENVIRONMENTAL REGU-**  
2 **LATIONS REQUIRED.**

3 *Nothing in this subtitle shall be construed to waive the*  
4 *applicability of environmental laws and regulations to any*  
5 *refinery facility.*

6 **SEC. 379. DEFINITIONS.**

7 *For the purposes of this subtitle, the term—*

8 *(1) “Administrator” means the Administrator of*  
9 *the Environmental Protection Agency;*

10 *(2) “Department” means the Department of En-*  
11 *ergy;*

12 *(3) “Federal authorization” means any author-*  
13 *ization required under Federal law (including the*  
14 *Clean Air Act, the Federal Water Pollution Control*  
15 *Act, the Safe Drinking Water Act, the Comprehensive*  
16 *Environmental Response, Compensation, and Liabil-*  
17 *ity Act of 1980, the Solid Waste Disposal Act, the*  
18 *Toxic Substances Control Act, the National Historic*  
19 *Preservation Act, and the National Environmental*  
20 *Policy Act of 1969) in order to site, construct, up-*  
21 *grade, or operate a refinery facility within a Refinery*  
22 *Revitalization Zone, including such permits, special*  
23 *use authorizations, certifications, opinions, or other*  
24 *approvals as may be required, whether issued by a*  
25 *Federal, State, or local agency;*

1           (4) “idle refinery” means any real property site  
2           that has been used at any time for a refinery facility  
3           since December 31, 1979, that has not been in oper-  
4           ation after April 1, 2005;

5           (5) “refinery facility” means any facility de-  
6           signed and operated to receive, unload, store, process  
7           and refine raw crude oil by any chemical or physical  
8           process, including distillation, fluid catalytic crack-  
9           ing, hydrocracking, coking, alkylation, etherification,  
10          polymerization, catalytic reforming, isomerization,  
11          hydrotreating, blending, and any combination thereof;

12          (6) “Revitalization Program Qualifying State”  
13          means a State or Indian Tribe that—

14                (A) has entered into the memorandum of  
15                understanding pursuant to section 375(b); and

16                (B) has established a refining infrastructure  
17                coordination office that the Secretary finds will  
18                facilitate Federal-State cooperation for the pur-  
19                poses of this subtitle; and

20          (7) “Secretary” means the Secretary of Energy.



1                   ***TITLE IV—COAL***  
2                   ***Subtitle A—Clean Coal Power***  
3                   ***Initiative***

4   **SEC. 401. AUTHORIZATION OF APPROPRIATIONS.**

5           (a) *CLEAN COAL POWER INITIATIVE.*—*There are au-*  
6 *thorized to be appropriated to the Secretary of Energy (re-*  
7 *ferred to in this title as the “Secretary”) to carry out the*  
8 *activities authorized by this subtitle \$200,000,000 for each*  
9 *of fiscal years 2006 through 2014, to remain available until*  
10 *expended.*

11          (b) *REPORT.*—*The Secretary shall submit to Congress*  
12 *the report required by this subsection not later than March*  
13 *31, 2007. The report shall include, with respect to subsection*  
14 *(a), a 10-year plan containing—*

15               (1) *a detailed assessment of whether the aggre-*  
16 *gate funding levels provided under subsection (a) are*  
17 *the appropriate funding levels for that program;*

18               (2) *a detailed description of how proposals will*  
19 *be solicited and evaluated, including a list of all ac-*  
20 *tivities expected to be undertaken;*

21               (3) *a detailed list of technical milestones for each*  
22 *coal and related technology that will be pursued; and*

23               (4) *a detailed description of how the program*  
24 *will avoid problems enumerated in General Account-*  
25 *ing Office reports on the Clean Coal Technology Pro-*

1        *gram, including problems that have resulted in*  
 2        *unspent funds and projects that failed either finan-*  
 3        *cially or scientifically.*

4    **SEC. 402. PROJECT CRITERIA.**

5        (a) *IN GENERAL.*—*The Secretary shall not provide*  
 6        *funding under this subtitle for any project that does not*  
 7        *advance efficiency, environmental performance, and cost*  
 8        *competitiveness well beyond the level of technologies that are*  
 9        *in commercial service or have been demonstrated on a scale*  
 10       *that the Secretary determines is sufficient to demonstrate*  
 11       *that commercial service is viable as of the date of enactment*  
 12       *of this Act.*

13       (b) *TECHNICAL CRITERIA FOR CLEAN COAL POWER*  
 14       *INITIATIVE.*—

15                (1) *GASIFICATION PROJECTS.*—

16                        (A) *IN GENERAL.*—*In allocating the funds*  
 17                        *made available under section 401(a), the Sec-*  
 18                        *retary shall ensure that at least 60 percent of the*  
 19                        *funds are used only for projects on coal-based*  
 20                        *gasification technologies, including gasification*  
 21                        *combined cycle, gasification fuel cells, gasifi-*  
 22                        *cation coproduction, and hybrid gasification/*  
 23                        *combustion.*

24                        (B) *TECHNICAL MILESTONES.*—*The Sec-*  
 25                        *retary shall periodically set technical milestones*

1        *specifying the emission and thermal efficiency*  
2        *levels that coal gasification projects under this*  
3        *subtitle shall be designed, and reasonably ex-*  
4        *pected, to achieve. The technical milestones shall*  
5        *become more restrictive during the life of the pro-*  
6        *gram. The Secretary shall set the periodic mile-*  
7        *stones so as to achieve by 2020 coal gasification*  
8        *projects able—*

9                *(i) to remove 99 percent of sulfur diox-*  
10              *ide;*

11              *(ii) to emit not more than .05 lbs of*  
12              *NO<sub>x</sub> per million Btu;*

13              *(iii) to achieve substantial reductions*  
14              *in mercury emissions; and*

15              *(iv) to achieve a thermal efficiency*  
16              *of—*

17                      *(I) 60 percent for coal of more*  
18                      *than 9,000 Btu;*

19                      *(II) 59 percent for coal of 7,000 to*  
20                      *9,000 Btu; and*

21                      *(III) 50 percent for coal of less*  
22                      *than 7,000 Btu.*

23              *(2) OTHER PROJECTS.—The Secretary shall pe-*  
24              *riodically set technical milestones and ensure that up*  
25              *to 40 percent of the funds appropriated pursuant to*

1        *section 401(a) are used for projects not described in*  
2        *paragraph (1). The milestones shall specify the emis-*  
3        *sion and thermal efficiency levels that projects funded*  
4        *under this paragraph shall be designed to and reason-*  
5        *ably expected to achieve. The technical milestones*  
6        *shall become more restrictive during the life of the*  
7        *program. The Secretary shall set the periodic mile-*  
8        *stones so as to achieve by 2010 projects able—*

9                *(A) to remove 97 percent of sulfur dioxide;*

10               *(B) to emit no more than .08 lbs of NO<sub>x</sub> per*  
11        *million Btu;*

12               *(C) to achieve substantial reductions in*  
13        *mercury emissions; and*

14               *(D) to achieve a thermal efficiency of—*

15               *(i) 45 percent for coal of more than*  
16        *9,000 Btu;*

17               *(ii) 44 percent for coal of 7,000 to*  
18        *9,000 Btu; and*

19               *(iii) 40 percent for coal of less than*  
20        *7,000 Btu.*

21               *(3) CONSULTATION.—Before setting the technical*  
22        *milestones under paragraphs (1)(B) and (2), the Sec-*  
23        *retary shall consult with the Administrator of the En-*  
24        *vironmental Protection Agency and interested enti-*  
25        *ties, including coal producers, industries using coal,*

1        *organizations to promote coal or advanced coal tech-*  
2        *nologies, environmental organizations, and organiza-*  
3        *tions representing workers.*

4            (4) *EXISTING UNITS.—In the case of projects at*  
5        *units in existence on the date of enactment of this*  
6        *Act, in lieu of the thermal efficiency requirements set*  
7        *forth in paragraph (1)(B)(iv) and (2)(D), the mile-*  
8        *stones shall be designed to achieve an overall thermal*  
9        *design efficiency improvement, compared to the effi-*  
10       *ciency of the unit as operated, of not less than—*

11            (A) *7 percent for coal of more than 9,000*

12            *Btu;*

13            (B) *6 percent for coal of 7,000 to 9,000 Btu;*

14            *or*

15            (C) *4 percent for coal of less than 7,000*

16            *Btu.*

17            (5) *PERMITTED USES.—In carrying out this sub-*  
18        *title, the Secretary may fund projects that include, as*  
19        *part of the project, the separation and capture of car-*  
20        *bon dioxide. The thermal efficiency goals of para-*  
21        *graphs (1), (2), and (4) shall not apply for projects*  
22        *that separate and capture at least 50 percent of the*  
23        *facility's potential emissions of carbon dioxide.*

1       (c) *FINANCIAL CRITERIA.*—*The Secretary shall not*  
2 *provide a funding award under this subtitle unless the re-*  
3 *cipient documents to the satisfaction of the Secretary that—*

4           (1) *the award recipient is financially viable*  
5 *without the receipt of additional Federal funding;*

6           (2) *the recipient will provide sufficient informa-*  
7 *tion to the Secretary to enable the Secretary to ensure*  
8 *that the award funds are spent efficiently and effec-*  
9 *tively; and*

10          (3) *a market exists for the technology being dem-*  
11 *onstrated or applied, as evidenced by statements of*  
12 *interest in writing from potential purchasers of the*  
13 *technology.*

14       (d) *FINANCIAL ASSISTANCE.*—*The Secretary shall pro-*  
15 *vide financial assistance to projects that meet the require-*  
16 *ments of subsections (a), (b), and (c) and are likely to—*

17           (1) *achieve overall cost reductions in the utiliza-*  
18 *tion of coal to generate useful forms of energy;*

19           (2) *improve the competitiveness of coal among*  
20 *various forms of energy in order to maintain a diver-*  
21 *sity of fuel choices in the United States to meet elec-*  
22 *tricity generation requirements; and*

23           (3) *demonstrate methods and equipment that are*  
24 *applicable to 25 percent of the electricity generating*  
25 *facilities, using various types of coal, that use coal as*

1        *the primary feedstock as of the date of enactment of*  
2        *this Act.*

3        (e) *FEDERAL SHARE.*—*The Federal share of the cost*  
4        *of a coal or related technology project funded by the Sec-*  
5        *retary under this subtitle shall not exceed 50 percent.*

6        (f) *APPLICABILITY.*—*No technology, or level of emis-*  
7        *sion reduction, shall be treated as adequately demonstrated*  
8        *for purposes of section 111 of the Clean Air Act (42 U.S.C.*  
9        *7411), achievable for purposes of section 169 of that Act*  
10       *(42 U.S.C. 7479), or achievable in practice for purposes of*  
11       *section 171 of that Act (42 U.S.C. 7501) solely by reason*  
12       *of the use of such technology, or the achievement of such*  
13       *emission reduction, by 1 or more facilities receiving assist-*  
14       *ance under this subtitle.*

15       **SEC. 403. REPORT.**

16       *Not later than 1 year after the date of enactment of*  
17       *this Act, and once every 2 years thereafter through 2014,*  
18       *the Secretary, in consultation with other appropriate Fed-*  
19       *eral agencies, shall submit to Congress a report describ-*  
20       *ing—*

21                (1) *the technical milestones set forth in section*  
22        *402 and how those milestones ensure progress toward*  
23        *meeting the requirements of subsections (b)(1)(B) and*  
24        *(b)(2) of section 402; and*

1           (2) *the status of projects funded under this sub-*  
 2       *title.*

3   **SEC. 404. CLEAN COAL CENTERS OF EXCELLENCE.**

4       *As part of the program authorized in section 401, the*  
 5   *Secretary shall award competitive, merit-based grants to*  
 6   *universities for the establishment of Centers of Excellence*  
 7   *for Energy Systems of the Future. The Secretary shall pro-*  
 8   *vide grants to universities that show the greatest potential*  
 9   *for advancing new clean coal technologies.*

10   ***Subtitle B—Clean Power Projects***

11   **SEC. 411. COAL TECHNOLOGY LOAN.**

12       *There are authorized to be appropriated to the Sec-*  
 13   *retary \$125,000,000 to provide a loan to the owner of the*  
 14   *experimental plant constructed under United States De-*  
 15   *partment of Energy cooperative agreement number DE-FC-*  
 16   *22–91PC90544 on such terms and conditions as the Sec-*  
 17   *retary determines, including interest rates and upfront*  
 18   *payments.*

19   **SEC. 412. COAL GASIFICATION.**

20       *The Secretary is authorized to provide loan guarantees*  
 21   *for a project to produce energy from a plant using inte-*  
 22   *grated gasification combined cycle technology of at least 400*  
 23   *megawatts in capacity that produces power at competitive*  
 24   *rates in deregulated energy generation markets and that*



1 *does not receive any subsidy (direct or indirect) from rate-*  
 2 *payers.*

3 **SEC. 414. PETROLEUM COKE GASIFICATION.**

4 *The Secretary is authorized to provide loan guarantees*  
 5 *for at least 5 petroleum coke gasification projects.*

6 **SEC. 416. ELECTRON SCRUBBING DEMONSTRATION.**

7 *The Secretary shall use \$5,000,000 from amounts ap-*  
 8 *propriated to initiate, through the Chicago Operations Of-*  
 9 *fice, a project to demonstrate the viability of high-energy*  
 10 *electron scrubbing technology on commercial-scale electrical*  
 11 *generation using high-sulfur coal.*

12 ***Subtitle D—Coal and Related***  
 13 ***Programs***

14 **SEC. 441. CLEAN AIR COAL PROGRAM.**

15 *(a) AMENDMENT.—The Energy Policy Act of 1992 is*  
 16 *amended by adding the following new title at the end there-*  
 17 *of:*

18 ***“TITLE XXXI—CLEAN AIR COAL***  
 19 ***PROGRAM***

20 ***“SEC. 3101. FINDINGS; PURPOSES; DEFINITIONS.***

21 *“(a) FINDINGS.—The Congress finds that—*

22 *“(1) new environmental regulations present ad-*  
 23 *ditional challenges for coal-fired electrical generation*  
 24 *in the private marketplace; and*

1           “(2) the Department of Energy, in cooperation  
 2           with industry, has already fully developed and com-  
 3           mercialized several new clean-coal technologies that  
 4           will allow the clean use of coal.

5           “(b) *PURPOSES.*—The purposes of this title are to—

6           “(1) promote national energy policy and energy  
 7           security, diversity, and economic competitiveness ben-  
 8           efits that result from the increased use of coal;

9           “(2) mitigate financial risks, reduce the cost,  
 10          and increase the marketplace acceptance of the new  
 11          clean coal technologies; and

12          “(3) advance the deployment of pollution control  
 13          equipment to meet the current and future obligations  
 14          of coal-fired generation units regulated under the  
 15          Clean Air Act (42 U.S.C. 7402 and following).

16   **“SEC. 3102. AUTHORIZATION OF PROGRAM.**

17          “The Secretary shall carry out a program to facilitate  
 18          production and generation of coal-based power and the in-  
 19          stallation of pollution control equipment.

20   **“SEC. 3103. AUTHORIZATION OF APPROPRIATIONS.**

21          “(a) *POLLUTION CONTROL PROJECTS.*—There are au-  
 22          thorized to be appropriated to the Secretary \$300,000,000  
 23          for fiscal year 2006, \$100,000,000 for fiscal year 2007,  
 24          \$40,000,000 for fiscal year 2008, \$30,000,000 for fiscal year  
 25          2009, and \$30,000,000 for fiscal year 2010, to remain

1 *available until expended, for carrying out the program for*  
2 *pollution control projects, which may include—*

3           “(1) *pollution control equipment and processes*  
4           *for the control of mercury air emissions;*

5           “(2) *pollution control equipment and processes*  
6           *for the control of nitrogen dioxide air emissions or*  
7           *sulfur dioxide emissions;*

8           “(3) *pollution control equipment and processes*  
9           *for the mitigation or collection of more than one pol-*  
10          *lutant;*

11          “(4) *advanced combustion technology for the con-*  
12          *trol of at least two pollutants, including mercury,*  
13          *particulate matter, nitrogen oxides, and sulfur diox-*  
14          *ide, which may also be designed to improve the energy*  
15          *efficiency of the unit; and*

16          “(5) *advanced pollution control equipment and*  
17          *processes designed to allow use of the waste byprod-*  
18          *ucts or other byproducts of the equipment or an elec-*  
19          *trical generation unit designed to allow the use of by-*  
20          *products.*

21 *Funds appropriated under this subsection which are not*  
22 *awarded before fiscal year 2012 may be applied to projects*  
23 *under subsection (b), in addition to amounts authorized*  
24 *under subsection (b).*

1       “(b) *GENERATION PROJECTS.*—*There are authorized*  
2 *to be appropriated to the Secretary \$250,000,000 for fiscal*  
3 *year 2007, \$350,000,000 for fiscal year 2008, \$400,000,000*  
4 *for fiscal year 2009, \$400,000,000 for fiscal year 2010,*  
5 *\$400,000,000 for fiscal year 2011, \$400,000,000 for fiscal*  
6 *year 2012, and \$300,000,000 for fiscal year 2013, to remain*  
7 *available until expended, for generation projects and air*  
8 *pollution control projects. Such projects may include—*

9               “(1) *coal-based electrical generation equipment*  
10 *and processes, including gasification combined cycle*  
11 *or other coal-based generation equipment and proc-*  
12 *esses;*

13               “(2) *associated environmental control equipment,*  
14 *that will be cost-effective and that is designed to meet*  
15 *anticipated regulatory requirements;*

16               “(3) *coal-based electrical generation equipment*  
17 *and processes, including gasification fuel cells, gasifi-*  
18 *cation coproduction, and hybrid gasification/combus-*  
19 *tion projects; and*

20               “(4) *advanced coal-based electrical generation*  
21 *equipment and processes, including oxidation combus-*  
22 *tion techniques, ultra-supercritical boilers, and chem-*  
23 *ical looping, which the Secretary determines will be*  
24 *cost-effective and could substantially contribute to*  
25 *meeting anticipated environmental or energy needs.*

1       “(c) *LIMITATION.—Funds placed at risk during any*  
2 *fiscal year for Federal loans or loan guarantees pursuant*  
3 *to this title may not exceed 30 percent of the total funds*  
4 *obligated under this title.*

5       **“SEC. 3104. AIR POLLUTION CONTROL PROJECT CRITERIA.**

6       *“The Secretary shall pursuant to authorizations con-*  
7 *tained in section 3103 provide funding for air pollution*  
8 *control projects designed to facilitate compliance with Fed-*  
9 *eral and State environmental regulations, including any*  
10 *regulation that may be established with respect to mercury.*

11       **“SEC. 3105. CRITERIA FOR GENERATION PROJECTS.**

12       “(a) *CRITERIA.—The Secretary shall establish criteria*  
13 *on which selection of individual projects described in section*  
14 *3103(b) should be based. The Secretary may modify the cri-*  
15 *teria as appropriate to reflect improvements in equipment,*  
16 *except that the criteria shall not be modified to be less strin-*  
17 *gent. These selection criteria shall include—*

18               “(1) *prioritization of projects whose installation*  
19 *is likely to result in significant air quality improve-*  
20 *ments in nonattainment air quality areas;*

21               “(2) *prioritization of projects that result in the*  
22 *repowering or replacement of older, less efficient*  
23 *units;*

24               “(3) *documented broad interest in the procure-*  
25 *ment of the equipment and utilization of the processes*

1       *used in the projects by electrical generator owners or*  
2       *operators;*

3               *“(4) equipment and processes beginning in 2006*  
4       *through 2011 that are projected to achieve an thermal*  
5       *efficiency of—*

6               *“(A) 40 percent for coal of more than 9,000*  
7       *Btu per pound based on higher heating values;*

8               *“(B) 38 percent for coal of 7,000 to 9,000*  
9       *Btu per pound based on higher heating values;*  
10       *and*

11               *“(C) 36 percent for coal of less than 7,000*  
12       *Btu per pound based on higher heating values,*  
13       *except that energy used for coproduction or cogenera-*  
14       *tion shall not be counted in calculating the thermal*  
15       *efficiency under this paragraph; and*

16               *“(5) equipment and processes beginning in 2012*  
17       *and 2013 that are projected to achieve an thermal ef-*  
18       *iciency of—*

19               *“(A) 45 percent for coal of more than 9,000*  
20       *Btu per pound based on higher heating values;*

21               *“(B) 44 percent for coal of 7,000 to 9,000*  
22       *Btu per pound based on higher heating values;*  
23       *and*

24               *“(C) 40 percent for coal of less than 7,000*  
25       *Btu per pound based on higher heating values,*

1       *except that energy used for coproduction or cogenera-*  
 2       *tion shall not be counted in calculating the thermal*  
 3       *efficiency under this paragraph.*

4       “(b) *SELECTION.—(1) In selecting the projects, up to*  
 5       *25 percent of the projects selected may be either coproduc-*  
 6       *tion or cogeneration or other gasification projects, but at*  
 7       *least 25 percent of the projects shall be for the sole purpose*  
 8       *of electrical generation, and priority should be given to*  
 9       *equipment and projects less than 600 MW to foster and pro-*  
 10       *mote standard designs.*

11       “(2) *The Secretary shall give priority to projects that*  
 12       *have been developed and demonstrated that are not yet cost*  
 13       *competitive, and for coal energy generation projects that ad-*  
 14       *vance efficiency, environmental performance, or cost com-*  
 15       *petitiveness significantly beyond the level of pollution con-*  
 16       *trol equipment that is in operation on a full scale.*

17       **“SEC. 3106. FINANCIAL CRITERIA.**

18       “(a) *IN GENERAL.—The Secretary shall only provide*  
 19       *financial assistance to projects that meet the requirements*  
 20       *of sections 3103 and 3104 and are likely to—*

21               “(1) *achieve overall cost reductions in the utili-*  
 22               *zation of coal to generate useful forms of energy; and*

23               “(2) *improve the competitiveness of coal in order*  
 24               *to maintain a diversity of domestic fuel choices in the*

1       *United States to meet electricity generation require-*  
2       *ments.*

3       “(b) *CONDITIONS.*—*The Secretary shall not provide a*  
4       *funding award under this title unless—*

5               “(1) *the award recipient is financially viable*  
6       *without the receipt of additional Federal funding;*  
7       *and*

8               “(2) *the recipient provides sufficient information*  
9       *to the Secretary for the Secretary to ensure that the*  
10       *award funds are spent efficiently and effectively.*

11       “(c) *EQUAL ACCESS.*—*The Secretary shall, to the ex-*  
12       *tent practical, utilize cooperative agreement, loan guar-*  
13       *antee, and direct Federal loan mechanisms designed to en-*  
14       *sure that all electrical generation owners have equal access*  
15       *to these technology deployment incentives. The Secretary*  
16       *shall develop and direct a competitive solicitation process*  
17       *for the selection of technologies and projects under this title.*

18       **“SEC. 3107. FEDERAL SHARE.**

19               *“The Federal share of the cost of a coal or related tech-*  
20       *nology project funded by the Secretary under this title shall*  
21       *not exceed 50 percent. For purposes of this title, Federal*  
22       *funding includes only appropriated funds.*

23       **“SEC. 3108. APPLICABILITY.**

24               *“No technology, or level of emission reduction, shall be*  
25       *treated as adequately demonstrated for purposes of section*



1 111 of the Clean Air Act (42 U.S.C. 7411), achievable for  
 2 purposes of section 169 of the Clean Air Act (42 U.S.C.  
 3 7479), or achievable in practice for purposes of section 171  
 4 of the Clean Air Act (42 U.S.C. 7501) solely by reason of  
 5 the use of such technology, or the achievement of such emis-  
 6 sion reduction, by one or more facilities receiving assistance  
 7 under this title.”.

8 (b) *TABLE OF CONTENTS AMENDMENT.*—The table of  
 9 contents of the Energy Policy Act of 1992 is amended by  
 10 adding at the end the following:

“TITLE XXXI—CLEAN AIR COAL PROGRAM

“Sec. 3101. Findings; purposes; definitions.

“Sec. 3102. Authorization of program.

“Sec. 3103. Authorization of appropriations.

“Sec. 3104. Air pollution control project criteria.

“Sec. 3105. Criteria for generation projects.

“Sec. 3106. Financial criteria.

“Sec. 3107. Federal share.

“Sec. 3108. Applicability.”.

11 ***TITLE V—INDIAN ENERGY***

12 ***SEC. 501. SHORT TITLE.***

13 *This title may be cited as the “Indian Tribal Energy*  
 14 *Development and Self-Determination Act of 2005”.*

15 ***SEC. 502. OFFICE OF INDIAN ENERGY POLICY AND PRO-***  
 16 ***GRAMS.***

17 (a) *IN GENERAL.*—Title II of the Department of En-  
 18 *ergy Organization Act (42 U.S.C. 7131 et seq.) is amended*  
 19 *by adding at the end the following:*

1       “OFFICE OF INDIAN ENERGY POLICY AND PROGRAMS

2       “SEC. 217. (a) *ESTABLISHMENT.*—*There is established*  
 3 *within the Department an Office of Indian Energy Policy*  
 4 *and Programs (referred to in this section as the ‘Office’).*  
 5 *The Office shall be headed by a Director, who shall be ap-*  
 6 *pointed by the Secretary and compensated at a rate equal*  
 7 *to that of level IV of the Executive Schedule under section*  
 8 *5315 of title 5, United States Code.*

9       “(b) *DUTIES OF DIRECTOR.*—*The Director, in accord-*  
 10 *ance with Federal policies promoting Indian self-deter-*  
 11 *mination and the purposes of this Act, shall provide, direct,*  
 12 *foster, coordinate, and implement energy planning, edu-*  
 13 *cation, management, conservation, and delivery programs*  
 14 *of the Department that—*

15               “(1) *promote Indian tribal energy development,*  
 16       *efficiency, and use;*

17               “(2) *reduce or stabilize energy costs;*

18               “(3) *enhance and strengthen Indian tribal en-*  
 19 *ergy and economic infrastructure relating to natural*  
 20 *resource development and electrification; and*

21               “(4) *bring electrical power and service to Indian*  
 22 *land and the homes of tribal members located on In-*  
 23 *dian lands or acquired, constructed, or improved (in*  
 24 *whole or in part) with Federal funds.”.*

25       (b) *CONFORMING AMENDMENTS.*—

1           (1) *The table of contents of the Department of*  
 2           *Energy Organization Act (42 U.S.C. prec. 7101) is*  
 3           *amended—*

4                     (A) *in the item relating to section 209, by*  
 5                     *striking “Section” and inserting “Sec.”; and*

6                     (B) *by striking the items relating to sections*  
 7                     *213 through 216 and inserting the following:*

          “Sec. 213. *Establishment of policy for National Nuclear Security Administration.*

          “Sec. 214. *Establishment of security, counterintelligence, and intelligence policies.*

          “Sec. 215. *Office of Counterintelligence.*

          “Sec. 216. *Office of Intelligence.*

          “Sec. 217. *Office of Indian Energy Policy and Programs.”.*

8           (2) *Section 5315 of title 5, United States Code,*  
 9           *is amended by inserting after “Inspector General, De-*  
 10           *partment of Energy.” the following:*

11                     “*Director, Office of Indian Energy Policy*  
 12                     *and Programs, Department of Energy.”*

13   **§503. Indian energy**

14           (a) *IN GENERAL.—Title XXVI of the Energy Policy*  
 15           *Act of 1992 (25 U.S.C. 3501 et seq.) is amended to read*  
 16           *as follows:*

17    **“TITLE XXVI—INDIAN ENERGY**

18    **“SEC. 2601. DEFINITIONS.**

19           “*For purposes of this title:*

20                     “(1) *The term ‘Director’ means the Director of*  
 21                     *the Office of Indian Energy Policy and Programs,*  
 22                     *Department of Energy.*

23                     “(2) *The term ‘Indian land’ means—*

1           “(A) any land located within the bound-  
2           aries of an Indian reservation, pueblo, or  
3           rancheria;

4           “(B) any land not located within the  
5           boundaries of an Indian reservation, pueblo, or  
6           rancheria, the title to which is held—

7                 “(i) in trust by the United States for  
8                 the benefit of an Indian tribe or an indi-  
9                 vidual Indian;

10                “(ii) by an Indian tribe or an indi-  
11                vidual Indian, subject to restriction against  
12                alienation under laws of the United States;  
13                or

14                “(iii) by a dependent Indian commu-  
15                nity; and

16           “(C) land that is owned by an Indian tribe  
17           and was conveyed by the United States to a Na-  
18           tive Corporation pursuant to the Alaska Native  
19           Claims Settlement Act (43 U.S.C. 1601 et seq.),  
20           or that was conveyed by the United States to a  
21           Native Corporation in exchange for such land.

22           “(3) The term ‘Indian reservation’ includes—

23                 “(A) an Indian reservation in existence in  
24                 any State or States as of the date of enactment  
25                 of this paragraph;

1                   “(B) a public domain Indian allotment;  
2                   and

3                   “(C) a dependent Indian community lo-  
4                   cated within the borders of the United States, re-  
5                   gardless of whether the community is located—

6                   “(i) on original or acquired territory  
7                   of the community; or

8                   “(ii) within or outside the boundaries  
9                   of any particular State.

10                  “(4) The term ‘Indian tribe’ has the meaning  
11                  given the term in section 4 of the Indian Self-Deter-  
12                  mination and Education Assistance Act (25 U.S.C.  
13                  450b), except that the term ‘Indian tribe’, for the pur-  
14                  pose of paragraph (11) and sections 2603(b)(3) and  
15                  2604, shall not include any Native Corporation.

16                  “(5) The term ‘integration of energy resources’  
17                  means any project or activity that promotes the loca-  
18                  tion and operation of a facility (including any pipe-  
19                  line, gathering system, transportation system or facil-  
20                  ity, or electric transmission or distribution facility)  
21                  on or near Indian land to process, refine, generate  
22                  electricity from, or otherwise develop energy resources  
23                  on, Indian land.

1           “(6) The term ‘Native Corporation’ has the  
2           meaning given the term in section 3 of the Alaska Na-  
3           tive Claims Settlement Act (43 U.S.C. 1602).

4           “(7) The term ‘organization’ means a partner-  
5           ship, joint venture, limited liability company, or  
6           other unincorporated association or entity that is es-  
7           tablished to develop Indian energy resources.

8           “(8) The term ‘Program’ means the Indian en-  
9           ergy resource development program established under  
10          section 2602(a).

11          “(9) The term ‘Secretary’ means the Secretary of  
12          the Interior.

13          “(10) The term ‘tribal energy resource develop-  
14          ment organization’ means an organization of 2 or  
15          more entities, at least 1 of which is an Indian tribe,  
16          that has the written consent of the governing bodies  
17          of all Indian tribes participating in the organization  
18          to apply for a grant, loan, or other assistance author-  
19          ized by section 2602.

20          “(11) The term ‘tribal land’ means any land or  
21          interests in land owned by any Indian tribe, title to  
22          which is held in trust by the United States or which  
23          is subject to a restriction against alienation under  
24          laws of the United States.

1 **“SEC. 2602. INDIAN TRIBAL ENERGY RESOURCE DEVELOP-**  
2 **MENT.**

3 *“(a) DEPARTMENT OF THE INTERIOR PROGRAM.—*

4 *“(1) To assist Indian tribes in the development*  
5 *of energy resources and further the goal of Indian self-*  
6 *determination, the Secretary shall establish and im-*  
7 *plement an Indian energy resource development pro-*  
8 *gram to assist consenting Indian tribes and tribal en-*  
9 *ergy resource development organizations in achieving*  
10 *the purposes of this title.*

11 *“(2) In carrying out the Program, the Secretary*  
12 *shall—*

13 *“(A) provide development grants to Indian*  
14 *tribes and tribal energy resource development or-*  
15 *ganizations for use in developing or obtaining*  
16 *the managerial and technical capacity needed to*  
17 *develop energy resources on Indian land, and to*  
18 *properly account for resulting energy production*  
19 *and revenues;*

20 *“(B) provide grants to Indian tribes and*  
21 *tribal energy resource development organizations*  
22 *for use in carrying out projects to promote the*  
23 *integration of energy resources, and to process,*  
24 *use, or develop those energy resources, on Indian*  
25 *land; and*

1           “(C) provide low-interest loans to Indian  
2           tribes and tribal energy resource development or-  
3           ganizations for use in the promotion of energy  
4           resource development on Indian land and inte-  
5           gration of energy resources.

6           “(3) There are authorized to be appropriated to  
7           carry out this subsection such sums as are necessary  
8           for each of fiscal years 2006 through 2016.

9           “(b) DEPARTMENT OF ENERGY INDIAN ENERGY EDU-  
10          CATION PLANNING AND MANAGEMENT ASSISTANCE PRO-  
11          GRAM.—

12           “(1) The Director shall establish programs to as-  
13           sist consenting Indian tribes in meeting energy edu-  
14           cation, research and development, planning, and  
15           management needs.

16           “(2) In carrying out this subsection, the Director  
17           may provide grants, on a competitive basis, to an In-  
18           dian tribe or tribal energy resource development orga-  
19           nization for use in carrying out—

20           “(A) energy, energy efficiency, and energy  
21           conservation programs;

22           “(B) studies and other activities supporting  
23           tribal acquisitions of energy supplies, services,  
24           and facilities;



1           “(C) *planning, construction, development,*  
2           *operation, maintenance, and improvement of*  
3           *tribal electrical generation, transmission, and*  
4           *distribution facilities located on Indian land;*  
5           *and*

6           “(D) *development, construction, and inter-*  
7           *connection of electric power transmission facili-*  
8           *ties located on Indian land with other electric*  
9           *transmission facilities.*

10          “(3)(A) *The Director may develop, in consulta-*  
11          *tion with Indian tribes, a formula for providing*  
12          *grants under this subsection.*

13          “(B) *In providing a grant under this subsection,*  
14          *the Director shall give priority to an application re-*  
15          *ceived from an Indian tribe with inadequate electric*  
16          *service (as determined by the Director).*

17          “(4) *The Secretary of Energy may issue such*  
18          *regulations as necessary to carry out this subsection.*

19          “(5) *There are authorized to be appropriated to*  
20          *carry out this subsection \$20,000,000 for each of fiscal*  
21          *years 2006 through 2016.*

22          “(c) *DEPARTMENT OF ENERGY LOAN GUARANTEE*  
23          *PROGRAM.—*

24          “(1) *Subject to paragraph (3), the Secretary of*  
25          *Energy may provide loan guarantees (as defined in*

1       *section 502 of the Federal Credit Reform Act of 1990*  
2       *(2 U.S.C. 661a)) for not more than 90 percent of the*  
3       *unpaid principal and interest due on any loan made*  
4       *to any Indian tribe for energy development.*

5               *“(2) A loan guarantee under this subsection shall*  
6       *be made by—*

7                       *“(A) a financial institution subject to ex-*  
8                       *amination by the Secretary of Energy; or*

9                       *“(B) an Indian tribe, from funds of the In-*  
10                      *dian tribe.*

11               *“(3) The aggregate outstanding amount guaran-*  
12       *teed by the Secretary of Energy at any time under*  
13       *this subsection shall not exceed \$2,000,000,000.*

14               *“(4) The Secretary of Energy may issue such*  
15       *regulations as the Secretary of Energy determines are*  
16       *necessary to carry out this subsection.*

17               *“(5) There are authorized to be appropriated*  
18       *such sums as are necessary to carry out this sub-*  
19       *section, to remain available until expended.*

20               *“(6) Not later than 1 year from the date of en-*  
21       *actment of this section, the Secretary of Energy shall*  
22       *report to Congress on the financing requirements of*  
23       *Indian tribes for energy development on Indian land.*

24       *“(d) FEDERAL AGENCIES—INDIAN ENERGY PREF-*  
25       *ERENCE.—*

1           “(1) *In purchasing electricity or any other en-*  
 2           *ergy product or byproduct, a Federal agency or de-*  
 3           *partment may give preference to an energy and re-*  
 4           *source production enterprise, partnership, consortium,*  
 5           *corporation, or other type of business organization the*  
 6           *majority of the interest in which is owned and con-*  
 7           *trolled by 1 or more Indian tribes.*

8           “(2) *In carrying out this subsection, a Federal*  
 9           *agency or department shall not—*

10                   “(A) *pay more than the prevailing market*  
 11                   *price for an energy product or byproduct; or*

12                   “(B) *obtain less than prevailing market*  
 13                   *terms and conditions.*

14   **“SEC. 2603. INDIAN TRIBAL ENERGY RESOURCE REGULA-**  
 15                   **TION.**

16           “(a) *GRANTS.—The Secretary may provide to Indian*  
 17           *tribes, on an annual basis, grants for use in accordance*  
 18           *with subsection (b).*

19           “(b) *USE OF FUNDS.—Funds from a grant provided*  
 20           *under this section may be used—*

21                   “(1) *by an Indian tribe for the development of*  
 22                   *a tribal energy resource inventory or tribal energy re-*  
 23                   *source on Indian land;*

1           “(2) by an Indian tribe for the development of  
2           a feasibility study or other report necessary to the de-  
3           velopment of energy resources on Indian land;

4           “(3) by an Indian tribe (other than an Indian  
5           Tribe in Alaska except the Metlakatla Indian Com-  
6           munity) for the development and enforcement of tribal  
7           laws (including regulations) relating to tribal energy  
8           resource development and the development of technical  
9           infrastructure to protect the environment under ap-  
10          plicable law; or

11          “(4) by a Native Corporation for the develop-  
12          ment and implementation of corporate policies and  
13          the development of technical infrastructure to protect  
14          the environment under applicable law; and

15          “(5) by an Indian tribe for the training of em-  
16          ployees that—

17                  “(A) are engaged in the development of en-  
18                  ergy resources on Indian land; or

19                  “(B) are responsible for protecting the envi-  
20                  ronment.

21          “(c) *OTHER ASSISTANCE*.—In carrying out the obliga-  
22          tions of the United States under this title, the Secretary  
23          shall ensure, to the maximum extent practicable and to the  
24          extent of available resources, that upon the request of an  
25          Indian tribe, the Indian tribe shall have available scientific

1 *and technical information and expertise, for use in the In-*  
 2 *dian tribe's regulation, development, and management of*  
 3 *energy resources on Indian land. The Secretary may fulfill*  
 4 *this responsibility either directly, through the use of Federal*  
 5 *officials, or indirectly, by providing financial assistance to*  
 6 *the Indian tribe to secure independent assistance.*

7 **“SEC. 2604. LEASES, BUSINESS AGREEMENTS, AND RIGHTS-**  
 8 **OF-WAY INVOLVING ENERGY DEVELOPMENT**  
 9 **OR TRANSMISSION.**

10 *“(a) LEASES AND BUSINESS AGREEMENTS.—Subject*  
 11 *to the provisions of this section—*

12 *“(1) an Indian tribe may, at its discretion, enter*  
 13 *into a lease or business agreement for the purpose of*  
 14 *energy resource development on tribal land, including*  
 15 *a lease or business agreement for—*

16 *“(A) exploration for, extraction of, proc-*  
 17 *essing of, or other development of the Indian*  
 18 *tribe's energy mineral resources located on tribal*  
 19 *land; and*

20 *“(B) construction or operation of an electric*  
 21 *generation, transmission, or distribution facility*  
 22 *located on tribal land or a facility to process or*  
 23 *refine energy resources developed on tribal land;*  
 24 *and*

1           “(2) such lease or business agreement described  
2       in paragraph (1) shall not require the approval of the  
3       Secretary under section 2103 of the Revised Statutes  
4       (25 U.S.C. 81) or any other provision of law, if—

5           “(A) the lease or business agreement is exe-  
6       cuted pursuant to a tribal energy resource agree-  
7       ment approved by the Secretary under subsection  
8       (e);

9           “(B) the term of the lease or business agree-  
10      ment does not exceed—

11           “(i) 30 years; or

12           “(ii) in the case of a lease for the pro-  
13      duction of oil resources, gas resources, or  
14      both, 10 years and as long thereafter as oil  
15      or gas is produced in paying quantities;  
16      and

17           “(C) the Indian tribe has entered into a  
18      tribal energy resource agreement with the Sec-  
19      retary, as described in subsection (e), relating to  
20      the development of energy resources on tribal  
21      land (including the periodic review and evalua-  
22      tion of the activities of the Indian tribe under  
23      the agreement, to be conducted pursuant to the  
24      provisions required by subsection (e)(2)(D)(i)).

1       “(b) *RIGHTS-OF-WAY FOR PIPELINES OR ELECTRIC*  
2 *TRANSMISSION OR DISTRIBUTION LINES.*—An Indian tribe  
3 *may grant a right-of-way over tribal land for a pipeline*  
4 *or an electric transmission or distribution line without ap-*  
5 *proval by the Secretary if—*

6               “(1) *the right-of-way is executed in accordance*  
7 *with a tribal energy resource agreement approved by*  
8 *the Secretary under subsection (e);*

9               “(2) *the term of the right-of-way does not exceed*  
10 *30 years;*

11              “(3) *the pipeline or electric transmission or dis-*  
12 *tribution line serves—*

13                   “(A) *an electric generation, transmission, or*  
14 *distribution facility located on tribal land; or*

15                   “(B) *a facility located on tribal land that*  
16 *processes or refines energy resources developed on*  
17 *tribal land; and*

18              “(4) *the Indian tribe has entered into a tribal*  
19 *energy resource agreement with the Secretary, as de-*  
20 *scribed in subsection (e), relating to the development*  
21 *of energy resources on tribal land (including the peri-*  
22 *odic review and evaluation of the Indian tribe’s ac-*  
23 *tivities under such agreement described in subpara-*  
24 *graphs (D) and (E) of subsection (e)(2)).*

1       “(c) *RENEWALS*.—A lease or business agreement en-  
 2       tered into or a right-of-way granted by an Indian tribe  
 3       under this section may be renewed at the discretion of the  
 4       Indian tribe in accordance with this section.

5       “(d) *VALIDITY*.—No lease, business agreement, or  
 6       right-of-way relating to the development of tribal energy re-  
 7       sources pursuant to the provisions of this section shall be  
 8       valid unless the lease, business agreement, or right-of-way  
 9       is authorized by the provisions of a tribal energy resource  
 10      agreement approved by the Secretary under subsection  
 11      (e)(2).

12      “(e) *TRIBAL ENERGY RESOURCE AGREEMENTS*.—

13           “(1) On issuance of regulations under paragraph  
 14      (8), an Indian tribe may submit to the Secretary for  
 15      approval a tribal energy resource agreement gov-  
 16      erning leases, business agreements, and rights-of-way  
 17      under this section.

18           “(2)(A) Not later than 180 days after the date  
 19      on which the Secretary receives a tribal energy re-  
 20      source agreement submitted by an Indian tribe under  
 21      paragraph (1), or not later than 60 days after the  
 22      Secretary receives a revised tribal energy resource  
 23      agreement submitted by an Indian tribe under para-  
 24      graph (4)(C), (or such later date as may be agreed to  
 25      by the Secretary and the Indian tribe), the Secretary



1       *shall approve or disapprove the tribal energy resource*  
2       *agreement.*

3               “(B) *The Secretary shall approve a tribal energy*  
4       *resource agreement submitted under paragraph (1)*  
5       *if—*

6                       “(i) *the Secretary determines that the In-*  
7       *dian tribe has demonstrated that the Indian*  
8       *tribe has sufficient capacity to regulate the devel-*  
9       *opment of energy resources of the Indian tribe;*

10                      “(ii) *the tribal energy resource agreement*  
11       *includes provisions required under subparagraph*  
12       *(D); and*

13                      “(iii) *the tribal energy resource agreement*  
14       *includes provisions that, with respect to a lease,*  
15       *business agreement, or right-of-way under this*  
16       *section—*

17                               “(I) *ensure the acquisition of necessary*  
18       *information from the applicant for the*  
19       *lease, business agreement, or right-of-way;*

20                              “(II) *address the term of the lease or*  
21       *business agreement or the term of convey-*  
22       *ance of the right-of-way;*

23                              “(III) *address amendments and renew-*  
24       *als;*

1           “(IV) address the economic return to  
2           the Indian tribe under leases, business  
3           agreements, and rights-of-way;

4           “(V) address technical or other relevant  
5           requirements;

6           “(VI) establish requirements for envi-  
7           ronmental review in accordance with sub-  
8           paragraph (C);

9           “(VII) ensure compliance with all ap-  
10          plicable environmental laws;

11          “(VIII) identify final approval author-  
12          ity;

13          “(IX) provide for public notification of  
14          final approvals;

15          “(X) establish a process for consulta-  
16          tion with any affected States concerning off-  
17          reservation impacts, if any, identified pur-  
18          suant to the provisions required under sub-  
19          paragraph (C)(i);

20          “(XI) describe the remedies for breach  
21          of the lease, business agreement, or right-of-  
22          way;

23          “(XII) require each lease, business  
24          agreement, and right-of-way to include a  
25          statement that, in the event that any of its

1        *provisions violates an express term or re-*  
2        *quirement set forth in the tribal energy re-*  
3        *source agreement pursuant to which it was*  
4        *executed—*

5                *“(aa) such provision shall be null*  
6                *and void; and*

7                *“(bb) if the Secretary determines*  
8                *such provision to be material, the Sec-*  
9                *retary shall have the authority to sus-*  
10              *pend or rescind the lease, business*  
11              *agreement, or right-of-way or take*  
12              *other appropriate action that the Sec-*  
13              *retary determines to be in the best in-*  
14              *terest of the Indian tribe;*

15              *“(XIII) require each lease, business*  
16              *agreement, and right-of-way to provide that*  
17              *it will become effective on the date on which*  
18              *a copy of the executed lease, business agree-*  
19              *ment, or right-of-way is delivered to the*  
20              *Secretary in accordance with regulations*  
21              *adopted pursuant to this subsection; and*

22              *“(XIV) include citations to tribal laws,*  
23              *regulations, or procedures, if any, that set*  
24              *out tribal remedies that must be exhausted*

1           *before a petition may be submitted to the*  
2           *Secretary pursuant to paragraph (7)(B).*

3           “(C) Tribal energy resource agreements sub-  
4           mitted under paragraph (1) shall establish, and in-  
5           clude provisions to ensure compliance with, an envi-  
6           ronmental review process that, with respect to a lease,  
7           business agreement, or right-of-way under this sec-  
8           tion, provides for—

9                   “(i) the identification and evaluation of all  
10                  significant environmental impacts (as compared  
11                  with a no-action alternative), including effects  
12                  on cultural resources;

13                  “(ii) the identification of proposed mitiga-  
14                  tion;

15                  “(iii) a process for ensuring that the public  
16                  is informed of and has an opportunity to com-  
17                  ment on the environmental impacts of the pro-  
18                  posed action before tribal approval of the lease,  
19                  business agreement, or right-of-way; and

20                  “(iv) sufficient administrative support and  
21                  technical capability to carry out the environ-  
22                  mental review process.

23           “(D) A tribal energy resource agreement nego-  
24           tiated between the Secretary and an Indian tribe in  
25           accordance with this subsection shall include—

1           “(i) provisions requiring the Secretary to  
2           conduct a periodic review and evaluation to  
3           monitor the performance of the Indian tribe’s ac-  
4           tivities associated with the development of energy  
5           resources under the tribal energy resource agree-  
6           ment; and

7           “(ii) when such review and evaluation re-  
8           sult in a finding by the Secretary of imminent  
9           jeopardy to a physical trust asset arising from  
10          a violation of the tribal energy resource agree-  
11          ment or applicable Federal laws, provisions au-  
12          thorizing the Secretary to take appropriate ac-  
13          tions determined by the Secretary to be necessary  
14          to protect such asset, which actions may include  
15          reassumption of responsibility for activities asso-  
16          ciated with the development of energy resources  
17          on tribal land until the violation and conditions  
18          that gave rise to such jeopardy have been cor-  
19          rected.

20          “(E) The periodic review and evaluation de-  
21          scribed in subparagraph (D) shall be conducted on an  
22          annual basis, except that, after the third such annual  
23          review and evaluation, the Secretary and the Indian  
24          tribe may mutually agree to amend the tribal energy  
25          resource agreement to authorize the review and eval-

1       uation required by subparagraph (D) to be conducted  
2       once every 2 years.

3               “(3) The Secretary shall provide notice and op-  
4       portunity for public comment on tribal energy re-  
5       source agreements submitted for approval under para-  
6       graph (1). The Secretary’s review of a tribal energy  
7       resource agreement under the National Environ-  
8       mental Policy Act of 1969 (42 U.S.C. 4321 et seq.)  
9       shall be limited to the direct effects of that approval.

10              “(4) If the Secretary disapproves a tribal energy  
11       resource agreement submitted by an Indian tribe  
12       under paragraph (1), the Secretary shall, not later  
13       than 10 days after the date of disapproval—

14                      “(A) notify the Indian tribe in writing of  
15       the basis for the disapproval;

16                      “(B) identify what changes or other actions  
17       are required to address the concerns of the Sec-  
18       retary; and

19                      “(C) provide the Indian tribe with an op-  
20       portunity to revise and resubmit the tribal en-  
21       ergy resource agreement.

22              “(5) If an Indian tribe executes a lease or busi-  
23       ness agreement or grants a right-of-way in accordance  
24       with a tribal energy resource agreement approved  
25       under this subsection, the Indian tribe shall, in ac-

1        *cordance with the process and requirements set forth*  
2        *in the Secretary’s regulations adopted pursuant to*  
3        *paragraph (8), provide to the Secretary—*

4                *“(A) a copy of the lease, business agreement,*  
5                *or right-of-way document (including all amend-*  
6                *ments to and renewals of the document); and*

7                *“(B) in the case of a tribal energy resource*  
8                *agreement or a lease, business agreement, or*  
9                *right-of-way that permits payments to be made*  
10               *directly to the Indian tribe, information and*  
11               *documentation of those payments sufficient to*  
12               *enable the Secretary to discharge the trust re-*  
13               *sponsibility of the United States to enforce the*  
14               *terms of, and protect the Indian tribe’s rights*  
15               *under, the lease, business agreement, or right-of-*  
16               *way.*

17               *“(6)(A) For purposes of the activities to be un-*  
18               *dertaken by the Secretary pursuant to this section, the*  
19               *Secretary shall—*

20               *“(i) carry out such activities in a manner*  
21               *consistent with the trust responsibility of the*  
22               *United States relating to mineral and other trust*  
23               *resources; and*

24               *“(ii) act in good faith and in the best inter-*  
25               *ests of the Indian tribes.*

1           “(B) Subject to the provisions of subsections  
2           (a)(2), (b), and (c) waiving the requirement of Secre-  
3           tarial approval of leases, business agreements, and  
4           rights-of-way executed pursuant to tribal energy re-  
5           source agreements approved under this section, and  
6           the provisions of subparagraph (D), nothing in this  
7           section shall absolve the United States from any re-  
8           sponsibility to Indians or Indian tribes, including,  
9           but not limited to, those which derive from the trust  
10          relationship or from any treaties, statutes, and other  
11          laws of the United States, Executive Orders, or agree-  
12          ments between the United States and any Indian  
13          tribe.

14          “(C) The Secretary shall continue to have a trust  
15          obligation to ensure that the rights and interests of an  
16          Indian tribe are protected in the event that—

17                 “(i) any other party to any such lease, busi-  
18                 ness agreement, or right-of-way violates any ap-  
19                 plicable provision of Federal law or the terms of  
20                 any lease, business agreement, or right-of-way  
21                 under this section; or

22                 “(ii) any provision in such lease, business  
23                 agreement, or right-of-way violates any express  
24                 provision or requirement set forth in the tribal  
25                 energy resource agreement pursuant to which the



1           *lease, business agreement, or right-of-way was*  
2           *executed.*

3           “(D) *Notwithstanding subparagraph (B), the*  
4           *United States shall not be liable to any party (includ-*  
5           *ing any Indian tribe) for any of the negotiated terms*  
6           *of, or any losses resulting from the negotiated terms*  
7           *of, a lease, business agreement, or right-of-way exe-*  
8           *cuted pursuant to and in accordance with a tribal en-*  
9           *ergy resource agreement approved by the Secretary*  
10          *under paragraph (2). For the purpose of this sub-*  
11          *paragraph, the term ‘negotiated terms’ means any*  
12          *terms or provisions that are negotiated by an Indian*  
13          *tribe and any other party or parties to a lease, busi-*  
14          *ness agreement, or right-of-way entered into pursuant*  
15          *to an approved tribal energy resource agreement.*

16          “(7)(A) *In this paragraph, the term ‘interested*  
17          *party’ means any person or entity the interests of*  
18          *which have sustained or will sustain a significant ad-*  
19          *verse environmental impact as a result of the failure*  
20          *of an Indian tribe to comply with a tribal energy re-*  
21          *source agreement of the Indian tribe approved by the*  
22          *Secretary under paragraph (2).*

23          “(B) *After exhaustion of tribal remedies, and in*  
24          *accordance with the process and requirements set*  
25          *forth in regulations adopted by the Secretary pursu-*

1        *ant to paragraph (8), an interested party may submit*  
2        *to the Secretary a petition to review compliance of an*  
3        *Indian tribe with a tribal energy resource agreement*  
4        *of the Indian tribe approved by the Secretary under*  
5        *paragraph (2).*

6                *“(C)(i) Not later than 120 days after the date on*  
7        *which the Secretary receives a petition under sub-*  
8        *paragraph (B), the Secretary shall determine whether*  
9        *the Indian tribe is not in compliance with the tribal*  
10       *energy resource agreement, as alleged in the petition.*

11               *“(ii) The Secretary may adopt procedures under*  
12       *paragraph (8) authorizing an extension of time, not*  
13       *to exceed 120 days, for making the determination*  
14       *under clause (i) in any case in which the Secretary*  
15       *determines that additional time is necessary to evalu-*  
16       *ate the allegations of the petition.*

17               *“(iii) Subject to subparagraph (D), if the Sec-*  
18       *retary determines that the Indian tribe is not in com-*  
19       *pliance with the tribal energy resource agreement as*  
20       *alleged in the petition, the Secretary shall take such*  
21       *action as is necessary to ensure compliance with the*  
22       *provisions of the tribal energy resource agreement,*  
23       *which action may include—*

24               *“(I) temporarily suspending some or all ac-*  
25       *tivities under a lease, business agreement, or*

1 *right-of-way under this section until the Indian*  
2 *tribe or such activities are in compliance with*  
3 *the provisions of the approved tribal energy re-*  
4 *source agreement; or*

5 *“(II) rescinding approval of all or part of*  
6 *the tribal energy resource agreement, and if all*  
7 *of such agreement is rescinded, reassuming the*  
8 *responsibility for approval of any future leases,*  
9 *business agreements, or rights-of-way described*  
10 *in subsections (a) and (b).*

11 *“(D) Prior to seeking to ensure compliance with*  
12 *the provisions of the tribal energy resource agreement*  
13 *of an Indian tribe under subparagraph (C)(iii), the*  
14 *Secretary shall—*

15 *“(i) make a written determination that de-*  
16 *scribes the manner in which the tribal energy re-*  
17 *source agreement has been violated;*

18 *“(ii) provide the Indian tribe with a writ-*  
19 *ten notice of the violations together with the*  
20 *written determination; and*

21 *“(iii) before taking any action described in*  
22 *subparagraph (C)(iii) or seeking any other rem-*  
23 *edy, provide the Indian tribe with a hearing and*  
24 *a reasonable opportunity to attain compliance*  
25 *with the tribal energy resource agreement.*

1           “(E) *An Indian tribe described in subparagraph*  
2           *(D) shall retain all rights to appeal as provided in*  
3           *regulations issued by the Secretary.*

4           “(8) *Not later than 1 year after the date of en-*  
5           *actment of the Indian Tribal Energy Development*  
6           *and Self-Determination Act of 2005, the Secretary*  
7           *shall issue regulations that implement the provisions*  
8           *of this subsection, including—*

9                   “(A) *criteria to be used in determining the*  
10                  *capacity of an Indian tribe described in para-*  
11                  *graph (2)(B)(i), including the experience of the*  
12                  *Indian tribe in managing natural resources and*  
13                  *financial and administrative resources available*  
14                  *for use by the Indian tribe in implementing the*  
15                  *approved tribal energy resource agreement of the*  
16                  *Indian tribe;*

17                  “(B) *a process and requirements in accord-*  
18                  *ance with which an Indian tribe may—*

19                          “(i) *voluntarily rescind a tribal energy*  
20                          *resource agreement approved by the Sec-*  
21                          *retary under this subsection; and*

22                          “(ii) *return to the Secretary the re-*  
23                          *sponsibility to approve any future leases,*  
24                          *business agreements, and rights-of-way de-*  
25                          *scribed in this subsection;*

1           “(C) provisions setting forth the scope of,  
 2           and procedures for, the periodic review and eval-  
 3           uation described in subparagraphs (D) and (E)  
 4           of paragraph (2), including provisions for review  
 5           of transactions, reports, site inspections, and any  
 6           other review activities the Secretary determines  
 7           to be appropriate; and

8           “(D) provisions defining final agency ac-  
 9           tions after exhaustion of administrative appeals  
 10          from determinations of the Secretary under  
 11          paragraph (7).

12          “(f) *NO EFFECT ON OTHER LAW.*—Nothing in this sec-  
 13          tion affects the application of—

14               “(1) any Federal environment law;

15               “(2) the Surface Mining Control and Reclama-  
 16          tion Act of 1977 (30 U.S.C. 1201 et seq.); or

17               “(3) except as otherwise provided in this title,  
 18          the Indian Mineral Development Act of 1982 (25  
 19          U.S.C. 2101 et seq.) and the National Environmental  
 20          Policy Act of 1969 (42 U.S.C. 4321 et seq.).

21          “(g) *AUTHORIZATION OF APPROPRIATIONS.*—There  
 22          are authorized to be appropriated to the Secretary such  
 23          sums as are necessary for each of fiscal years 2006 through  
 24          2016 to implement the provisions of this section and to  
 25          make grants or provide other appropriate assistance to In-

1 *dian tribes to assist the Indian tribes in developing and*  
 2 *implementing tribal energy resource agreements in accord-*  
 3 *ance with the provisions of this section.*

4 **“SEC. 2605. INDIAN MINERAL DEVELOPMENT REVIEW.**

5       “(a) *IN GENERAL.*—*The Secretary shall conduct a re-*  
 6 *view of all activities being conducted under the Indian Min-*  
 7 *eral Development Act of 1982 (25 U.S.C. 2101 et seq.) as*  
 8 *of that date.*

9       “(b) *REPORT.*—*Not later than 1 year after the date*  
 10 *of enactment of the Indian Tribal Energy Development and*  
 11 *Self-Determination Act of 2005, the Secretary shall submit*  
 12 *to Congress a report that includes—*

13               “(1) *the results of the review;*

14               “(2) *recommendations to ensure that Indian*  
 15 *tribes have the opportunity to develop Indian energy*  
 16 *resources; and*

17               “(3) *an analysis of the barriers to the develop-*  
 18 *ment of energy resources on Indian land (including*  
 19 *legal, fiscal, market, and other barriers), along with*  
 20 *recommendations for the removal of those barriers.”.*

21       “(b) *CONFORMING AMENDMENTS.*—*The table of contents*  
 22 *for the Energy Policy Act of 1992 is amended by striking*  
 23 *the items relating to title XXVI and inserting the following:*

“Sec. 2601. *Definitions.*

“Sec. 2602. *Indian tribal energy resource development.*

“Sec. 2603. *Indian tribal energy resource regulation.*

*“Sec. 2604. Leases, business agreements, and rights-of-way involving energy development or transmission.*

*“Sec. 2605. Indian mineral development review.”.*

**1 §504. Four Corners transmission line project**

2       *The Dine Power Authority, an enterprise of the Navajo*  
 3 *Nation, shall be eligible to receive grants and other assist-*  
 4 *ance as authorized by section 217 of the Department of En-*  
 5 *ergy Organization Act, as added by section 502 of this title,*  
 6 *and section 2602 of the Energy Policy Act of 1992, as*  
 7 *amended by this title, for activities associated with the de-*  
 8 *velopment of a transmission line from the Four Corners*  
 9 *Area to southern Nevada, including related power genera-*  
 10 *tion opportunities.*

**11 §505. Energy efficiency in federally assisted housing**

12       *(a) IN GENERAL.—The Secretary of Housing and*  
 13 *Urban Development shall promote energy conservation in*  
 14 *housing that is located on Indian land and assisted with*  
 15 *Federal resources through—*

16               *(1) the use of energy-efficient technologies and*  
 17               *innovations (including the procurement of energy-effi-*  
 18               *cient refrigerators and other appliances);*

19               *(2) the promotion of shared savings contracts;*  
 20               *and*

21               *(3) the use and implementation of such other*  
 22               *similar technologies and innovations as the Secretary*  
 23               *of Housing and Urban Development considers to be*  
 24               *appropriate.*

1       (b) *AMENDMENT.*—Section 202(2) of the Native Amer-  
 2       ican Housing and Self-Determination Act of 1996 (25  
 3       U.S.C. 4132(2)) is amended by inserting “improvement to  
 4       achieve greater energy efficiency,” after “planning.”

5       **§ 506. Consultation with Indian tribes**

6       *In carrying out this title and the amendments made*  
 7       *by this title, the Secretary of Energy and the Secretary*  
 8       *shall, as appropriate and to the maximum extent prac-*  
 9       *ticable, involve and consult with Indian tribes in a manner*  
 10       *that is consistent with the Federal trust and the govern-*  
 11       *ment-to-government relationships between Indian tribes*  
 12       *and the United States.*

13       **TITLE VI—NUCLEAR MATTERS**

14       **Subtitle A—Price-Anderson Act Amendments**

15       **§ 601. Short title**

16       *This subtitle may be cited as the “Price-Anderson*  
 17       *Amendments Act of 2005” .*

18       **§ 602. Extension of indemnification authority**

19       (a) *INDEMNIFICATION OF NUCLEAR REGULATORY*  
 20       *COMMISSION LICENSEES.*—Section 170 c. of the Atomic En-  
 21       ergy Act of 1954 (42 U.S.C. 2210(c)) is amended—

22               (1) *in the subsection heading, by striking “LI-*  
 23               *CENSES” and inserting “LICENSEES”; and*

24               (2) *by striking “December 31, 2003” each place*  
 25               *it appears and inserting “December 31, 2025”.*



1       (b) *INDEMNIFICATION OF DEPARTMENT OF ENERGY*  
 2 *CONTRACTORS.*—Section 170 d.(1)(A) of the Atomic Energy  
 3 Act of 1954 (42 U.S.C. 2210(d)(1)(A)) is amended by strik-  
 4 ing “December 31, 2006” and inserting “December 31,  
 5 2025”.

6       (c) *INDEMNIFICATION OF NONPROFIT EDUCATIONAL*  
 7 *INSTITUTIONS.*—Section 170 k. of the Atomic Energy Act  
 8 of 1954 (42 U.S.C. 2210(k)) is amended by striking “August  
 9 1, 2002” each place it appears and inserting “December  
 10 31, 2025”.

11 **§ 603. Maximum assessment**

12       Section 170 of the Atomic Energy Act of 1954 (42  
 13 U.S.C. 2210) is amended—

14               (1) in the second proviso of the third sentence of  
 15 subsection b.(1)—

16                       (A) by striking “\$63,000,000” and inserting  
 17 “\$95,800,000”; and

18                       (B) by striking “\$10,000,000 in any 1  
 19 year” and inserting “\$15,000,000 in any 1 year  
 20 (subject to adjustment for inflation under sub-  
 21 section t.)”; and

22               (2) in subsection t.(1)—

23                       (A) by inserting “total and annual” after  
 24 “amount of the maximum”;

1                   (B) by striking “the date of the enactment  
 2                   of the Price-Anderson Amendments Act of 1988”  
 3                   and inserting “August 20, 2003”; and  
 4                   (C) in subparagraph (A), by striking “such  
 5                   date of enactment” and inserting “August 20,  
 6                   2003”.

7 **§ 604. Department of Energy liability limit**

8           (a) INDEMNIFICATION OF DEPARTMENT OF ENERGY  
 9 CONTRACTORS.—Section 170 d. of the Atomic Energy Act  
 10 of 1954 (42 U.S.C. 2210(d)) is amended by striking para-  
 11 graph (2) and inserting the following:

12           “(2) In an agreement of indemnification entered into  
 13 under paragraph (1), the Secretary—

14                   “(A) may require the contractor to provide and  
 15                   maintain financial protection of such a type and in  
 16                   such amounts as the Secretary shall determine to be  
 17                   appropriate to cover public liability arising out of or  
 18                   in connection with the contractual activity; and

19                   “(B) shall indemnify the persons indemnified  
 20                   against such liability above the amount of the finan-  
 21                   cial protection required, in the amount of  
 22                   \$10,000,000,000 (subject to adjustment for inflation  
 23                   under subsection t.), in the aggregate, for all persons  
 24                   indemnified in connection with the contract and for

1        *each nuclear incident, including such legal costs of the*  
 2        *contractor as are approved by the Secretary.”.*

3        (b) *CONTRACT AMENDMENTS.*—Section 170 d. of the  
 4        *Atomic Energy Act of 1954 (42 U.S.C. 2210(d)) is further*  
 5        *amended by striking paragraph (3) and inserting the fol-*  
 6        *lowing—*

7        *“(3) All agreements of indemnification under which*  
 8        *the Department of Energy (or its predecessor agencies) may*  
 9        *be required to indemnify any person under this section shall*  
 10       *be deemed to be amended, on the date of enactment of the*  
 11       *Price-Anderson Amendments Act of 2005, to reflect the*  
 12       *amount of indemnity for public liability and any applica-*  
 13       *ble financial protection required of the contractor under this*  
 14       *subsection.”.*

15       (c) *LIABILITY LIMIT.*—Section 170 e.(1)(B) of the  
 16       *Atomic Energy Act of 1954 (42 U.S.C. 2210(e)(1)(B)) is*  
 17       *amended—*

18                (1) *by striking “the maximum amount of finan-*  
 19        *cial protection required under subsection b. or”;* and

20                (2) *by striking “paragraph (3) of subsection d.,*  
 21        *whichever amount is more” and inserting “paragraph*  
 22        *(2) of subsection d.”.*

23       **§ 605. Incidents outside the United States**

24       (a) *AMOUNT OF INDEMNIFICATION.*—Section 170 d.(5)  
 25       *of the Atomic Energy Act of 1954 (42 U.S.C. 2210(d)(5))*

1 *is amended by striking “\$100,000,000” and inserting*  
 2 *“\$500,000,000”.*

3 *(b) LIABILITY LIMIT.—Section 170 e.(4) of the Atomic*  
 4 *Energy Act of 1954 (42 U.S.C. 2210(e)(4)) is amended by*  
 5 *striking “\$100,000,000” and inserting “\$500,000,000”.*

## 6 **§ 606. Reports**

7 *Section 170 p. of the Atomic Energy Act of 1954 (42*  
 8 *U.S.C. 2210(p)) is amended by striking “August 1, 1998”*  
 9 *and inserting “December 31, 2021”.*

## 10 **§ 607. Inflation adjustment**

11 *Section 170 t. of the Atomic Energy Act of 1954 (42*  
 12 *U.S.C. 2210(t)) is amended—*

13 *(1) by redesignating paragraph (2) as para-*  
 14 *graph (3); and*

15 *(2) by inserting after paragraph (1) the fol-*  
 16 *lowing:*

17 *“(2) The Secretary shall adjust the amount of indem-*  
 18 *nification provided under an agreement of indemnification*  
 19 *under subsection d. not less than once during each 5-year*  
 20 *period following July 1, 2003, in accordance with the aggre-*  
 21 *gate percentage change in the Consumer Price Index*  
 22 *since—*

23 *“(A) that date, in the case of the first adjustment*  
 24 *under this paragraph; or*

1           “(B) the previous adjustment under this para-  
2       graph.”.

3   **§ 608. Treatment of modular reactors**

4       Section 170 b. of the Atomic Energy Act of 1954 (42  
5   U.S.C. 2210(b)) is amended by adding at the end the fol-  
6   lowing:

7       “(5)(A) For purposes of this section only, the Commis-  
8   sion shall consider a combination of facilities described in  
9   subparagraph (B) to be a single facility having a rated ca-  
10   pacity of 100,000 electrical kilowatts or more.

11       “(B) A combination of facilities referred to in subpara-  
12   graph (A) is 2 or more facilities located at a single site,  
13   each of which has a rated capacity of 100,000 electrical kilo-  
14   watts or more but not more than 300,000 electrical kilo-  
15   watts, with a combined rated capacity of not more than  
16   1,300,000 electrical kilowatts.”.

17   **§ 609. Applicability**

18       The amendments made by sections 603, 604, and 605  
19   do not apply to a nuclear incident that occurs before the  
20   date of the enactment of this Act.

1 **§610. Prohibition on assumption by United States**  
2 **Government of liability for certain foreign**  
3 **incidents**

4 Section 170 of the Atomic Energy Act of 1954 (42  
5 U.S.C. 2210) is amended by adding at the end the following  
6 new subsection:

7 “u. PROHIBITION ON ASSUMPTION OF LIABILITY FOR  
8 CERTAIN FOREIGN INCIDENTS.—Notwithstanding this sec-  
9 tion or any other provision of law, no officer of the United  
10 States or of any department, agency, or instrumentality of  
11 the United States Government may enter into any contract  
12 or other arrangement, or into any amendment or modifica-  
13 tion of a contract or other arrangement, the purpose or ef-  
14 fect of which would be to directly or indirectly impose li-  
15 ability on the United States Government, or any depart-  
16 ment, agency, or instrumentality of the United States Gov-  
17 ernment, or to otherwise directly or indirectly require an  
18 indemnity by the United States Government, for nuclear  
19 incidents occurring in connection with the design, construc-  
20 tion, or operation of a production facility or utilization fa-  
21 cility in any country whose government has been identified  
22 by the Secretary of State as engaged in state sponsorship  
23 of terrorist activities (specifically including any country the  
24 government of which, as of September 11, 2001, had been  
25 determined by the Secretary of State under section 620A(a)  
26 of the Foreign Assistance Act of 1961 (22 U.S.C. 2371(a)),

1 *section 6(j)(1) of the Export Administration Act of 1979*  
 2 *(50 U.S.C. App. 2405(j)(1)), or section 40(d) of the Arms*  
 3 *Export Control Act (22 U.S.C. 2780(d)) to have repeatedly*  
 4 *provided support for acts of international terrorism). This*  
 5 *subsection shall not apply to nuclear incidents occurring*  
 6 *as a result of missions, carried out under the direction of*  
 7 *the Secretary of Energy, the Secretary of Defense, or the*  
 8 *Secretary of State, that are necessary to safely secure, store,*  
 9 *transport, or remove nuclear materials for nuclear safety*  
 10 *or nonproliferation purposes.”.*

11 **§611. Civil penalties**

12 (a) *REPEAL OF AUTOMATIC REMISSION.*—Section  
 13 *234A b.(2) of the Atomic Energy Act of 1954 (42 U.S.C.*  
 14 *2282a(b)(2)) is amended by striking the last sentence.*

15 (b) *LIMITATION FOR NOT-FOR-PROFIT INSTITU-*  
 16 *TIONS.*—Subsection *d.* of section 234A of the Atomic Energy  
 17 Act of 1954 (42 U.S.C. 2282a(d)) is amended to read as  
 18 follows:

19 “*d.(1) Notwithstanding subsection a., in the case of*  
 20 *any not-for-profit contractor, subcontractor, or supplier, the*  
 21 *total amount of civil penalties paid under subsection a.*  
 22 *may not exceed the total amount of fees paid within any*  
 23 *1-year period (as determined by the Secretary) under the*  
 24 *contract under which the violation occurs.*

1       “(2) *For purposes of this section, the term ‘not-for-*  
 2 *profit’ means that no part of the net earnings of the con-*  
 3 *tractor, subcontractor, or supplier inures to the benefit of*  
 4 *any natural person or for-profit artificial person.’”.*

5       (c) *EFFECTIVE DATE.*—*The amendments made by this*  
 6 *section shall not apply to any violation of the Atomic En-*  
 7 *ergy Act of 1954 (42 U.S.C. 2011 et seq.) occurring under*  
 8 *a contract entered into before the date of enactment of this*  
 9 *section.*

#### 10 **§612. Financial accountability**

11       (a) *AMENDMENT.*—*Section 170 of the Atomic Energy*  
 12 *Act of 1954 (42 U.S.C. 2210) is amended by adding at the*  
 13 *end the following new subsection:*

14       “v. *FINANCIAL ACCOUNTABILITY.*—(1) *Notwith-*  
 15 *standing subsection d., the Attorney General may bring an*  
 16 *action in the appropriate United States district court to*  
 17 *recover from a contractor of the Secretary (or subcontractor*  
 18 *or supplier of such contractor) amounts paid by the Federal*  
 19 *Government under an agreement of indemnification under*  
 20 *subsection d. for public liability resulting from conduct*  
 21 *which constitutes intentional misconduct of any corporate*  
 22 *officer, manager, or superintendent of such contractor (or*  
 23 *subcontractor or supplier of such contractor).*

24       “(2) *The Attorney General may recover under*  
 25 *paragraph (1) an amount not to exceed the amount*



1       of the profit derived by the defendant from the con-  
2       tract.

3               “(3) No amount recovered from any contractor  
4       (or subcontractor or supplier of such contractor)  
5       under paragraph (1) may be reimbursed directly or  
6       indirectly by the Department of Energy.

7               “(4) Paragraph (1) shall not apply to any non-  
8       profit entity conducting activities under contract for  
9       the Secretary.

10              “(5) No waiver of a defense required under this  
11       section shall prevent a defendant from asserting such  
12       defense in an action brought under this subsection.

13              “(6) The Secretary shall, by rule, define the  
14       terms ‘profit’ and ‘nonprofit entity’ for purposes of  
15       this subsection. Such rulemaking shall be completed  
16       not later than 180 days after the date of the enact-  
17       ment of this subsection.”.

18       (b) *EFFECTIVE DATE.*—The amendment made by this  
19       section shall not apply to any agreement of indemnification  
20       entered into under section 170 d. of the Atomic Energy Act  
21       of 1954 (42 U.S.C. 2210(d)) before the date of the enactment  
22       of this Act.

1                   **Subtitle B—General Nuclear Matters**

2   **§ 621. Licenses**

3           *Section 103 c. of the Atomic Energy Act of 1954 (42*  
4   *U.S.C. 2133(c)) is amended by inserting “from the author-*  
5   *ization to commence operations” after “forty years”.*

6   **§ 622. NRC training program**

7           *(a) IN GENERAL.—In order to maintain the human*  
8   *resource investment and infrastructure of the United States*  
9   *in the nuclear sciences, health physics, and engineering*  
10   *fields, in accordance with the statutory authorities of the*  
11   *Nuclear Regulatory Commission relating to the civilian nu-*  
12   *clear energy program, the Nuclear Regulatory Commission*  
13   *shall carry out a training and fellowship program to ad-*  
14   *dress shortages of individuals with critical nuclear safety*  
15   *regulatory skills.*

16           *(b) AUTHORIZATION OF APPROPRIATIONS.—*

17           *(1) IN GENERAL.—There are authorized to be ap-*  
18   *propriated to the Nuclear Regulatory Commission to*  
19   *carry out this section \$1,000,000 for each of fiscal*  
20   *years 2005 through 2009.*

21           *(2) AVAILABILITY.—Funds made available under*  
22   *paragraph (1) shall remain available until expended.*

23   **§ 623. Cost recovery from government agencies**

24           *Section 161 w. of the Atomic Energy Act of 1954 (42*  
25   *U.S.C. 2201(w)) is amended—*

1           (1) *by striking “for or is issued” and all that fol-*  
 2           *lows through “1702” and inserting “to the Commis-*  
 3           *sion for, or is issued by the Commission, a license or*  
 4           *certificate”;*

5           (2) *by striking “483a” and inserting “9701”;*  
 6           *and*

7           (3) *by striking “, of applicants for, or holders of,*  
 8           *such licenses or certificates”.*

9   **§ 624. Elimination of pension offset**

10       *Section 161 of the Atomic Energy Act of 1954 (42*  
 11       *U.S.C. 2201) is amended by adding at the end the following:*

12       *“y. Exempt from the application of sections 8344 and*  
 13       *8468 of title 5, United States Code, an annuitant who was*  
 14       *formerly an employee of the Commission who is hired by*  
 15       *the Commission as a consultant, if the Commission finds*  
 16       *that the annuitant has a skill that is critical to the perform-*  
 17       *ance of the duties of the Commission.”.*

18   **§ 625. Antitrust review**

19       *Section 105 c. of the Atomic Energy Act of 1954 (42*  
 20       *U.S.C. 2135(c)) is amended by adding at the end the fol-*  
 21       *lowing:*

22       *“(9) APPLICABILITY.—This subsection does not apply*  
 23       *to an application for a license to construct or operate a*  
 24       *utilization facility or production facility under section 103*

1 *or 104 b. that is filed on or after the date of enactment*  
 2 *of this paragraph.”.*

3 **§ 626. Decommissioning**

4 *Section 161 i. of the Atomic Energy Act of 1954 (42*  
 5 *U.S.C. 2201(i)) is amended—*

6 *(1) by striking “and (3)” and inserting “(3)”;*  
 7 *and*

8 *(2) by inserting before the semicolon at the end*  
 9 *the following: “, and (4) to ensure that sufficient*  
 10 *funds will be available for the decommissioning of*  
 11 *any production or utilization facility licensed under*  
 12 *section 103 or 104 b., including standards and re-*  
 13 *strictions governing the control, maintenance, use,*  
 14 *and disbursement by any former licensee under this*  
 15 *Act that has control over any fund for the decommis-*  
 16 *sioning of the facility”.*

17 **§ 627. Limitation on legal fee reimbursement**

18 *Title II of the Energy Reorganization Act of 1974 (42*  
 19 *U.S.C. 5841 et seq.) is amended by adding at the end the*  
 20 *following new section:*

21 *“LIMITATION ON LEGAL FEE REIMBURSEMENT*

22 *“SEC. 212. The Department of Energy shall not, except*  
 23 *as required under a contract entered into before the date*  
 24 *of enactment of this section, reimburse any contractor or*  
 25 *subcontractor of the Department for any legal fees or ex-*  
 26 *penses incurred with respect to a complaint subsequent to—*

1           “(1) an adverse determination on the merits  
2           with respect to such complaint against the contractor  
3           or subcontractor by the Director of the Department of  
4           Energy’s Office of Hearings and Appeals pursuant to  
5           part 708 of title 10, Code of Federal Regulations, or  
6           by a Department of Labor Administrative Law Judge  
7           pursuant to section 211 of this Act; or

8           “(2) an adverse final judgment by any State or  
9           Federal court with respect to such complaint against  
10          the contractor or subcontractor for wrongful termi-  
11          nation or retaliation due to the making of disclosures  
12          protected under chapter 12 of title 5, United States  
13          Code, section 211 of this Act, or any comparable  
14          State law,

15 unless the adverse determination or final judgment is re-  
16 versed upon further administrative or judicial review.”.

17 **§ 629. Report on feasibility of developing commercial**  
18 **nuclear energy generation facilities at ex-**  
19 **isting Department of Energy sites**

20          Not later than 1 year after the date of the enactment  
21 of this Act, the Secretary of Energy shall submit to Congress  
22 a report on the feasibility of developing commercial nuclear  
23 energy generation facilities at Department of Energy sites  
24 in existence on the date of enactment of this Act.

1 **§ 630. Uranium sales**

2       (a) *SALES, TRANSFERS, AND SERVICES.*—Section  
3 *3112 of the USEC Privatization Act (42 U.S.C. 2297h–10)*  
4 *is amended by striking subsections (d), (e), and (f) and in-*  
5 *serting the following:*

6       “(3) *The Secretary may transfer to the Corporation,*  
7 *notwithstanding subsections (b)(2) and (d), natural ura-*  
8 *nium in amounts sufficient to fulfill the Department of En-*  
9 *ergy’s commitments under Article 4(B) of the Agreement be-*  
10 *tween the Department and the Corporation dated June 17,*  
11 *2002.*

12       “(d) *INVENTORY SALES.*—(1) *In addition to the trans-*  
13 *fers and sales authorized under subsections (b) and (c) and*  
14 *under paragraph (5) of this subsection, the United States*  
15 *Government may transfer or sell uranium in any form sub-*  
16 *ject to paragraphs (2), (3), and (4).*

17       “(2) *Except as provided in subsections (b) and (c) and*  
18 *paragraph (5) of this subsection, no sale or transfer of ura-*  
19 *nium shall be made under this subsection by the United*  
20 *States Government unless—*

21               “(A) *the President determines that the material*  
22 *is not necessary for national security needs and the*  
23 *sale or transfer has no adverse impact on implemen-*  
24 *tation of existing government-to-government agree-*  
25 *ments;*

1           “(B) the price paid to the appropriate Federal  
2           agency, if the transaction is a sale, will not be less  
3           than the fair market value of the material; and

4           “(C) the sale or transfer to commercial nuclear  
5           power end users is made pursuant to a contract of at  
6           least 3 years’ duration.

7           “(3) Except as provided in paragraph (5), the United  
8           States Government shall not make any transfer or sale of  
9           uranium in any form under this subsection that would  
10          cause the total amount of uranium transferred or sold pur-  
11          suant to this subsection that is delivered for consumption  
12          by commercial nuclear power end users to exceed—

13           “(A) 3,000,000 pounds of  $U_3O_8$  equivalent in  
14          fiscal year 2005, 2006, 2007, 2008, or 2009;

15           “(B) 5,000,000 pounds of  $U_3O_8$  equivalent in fis-  
16          cal year 2010 or 2011;

17           “(C) 7,000,000 pounds of  $U_3O_8$  equivalent in fis-  
18          cal year 2012; and

19           “(D) 10,000,000 pounds of  $U_3O_8$  equivalent in  
20          fiscal year 2013 or any fiscal year thereafter.

21          “(4) Except for sales or transfers under paragraph (5),  
22          for the purposes of this subsection, the recovery of uranium  
23          from uranium bearing materials transferred or sold by the  
24          United States Government to the domestic uranium indus-  
25          try shall be the preferred method of making uranium avail-

1 *able. The recovered uranium shall be counted against the*  
2 *annual maximum deliveries set forth in this section, when*  
3 *such uranium is sold to end users.*

4       “(5) *The United States Government may make the fol-*  
5 *lowing sales and transfers:*

6               “(A) *Sales or transfers to a Federal agency if the*  
7 *material is transferred for the use of the receiving*  
8 *agency without any resale or transfer to another enti-*  
9 *ty and the material does not meet commercial speci-*  
10 *fications.*

11              “(B) *Sales or transfers to any person for na-*  
12 *tional security purposes, as determined by the Sec-*  
13 *retary.*

14              “(C) *Sales or transfers to any State or local*  
15 *agency or nonprofit, charitable, or educational insti-*  
16 *tution for use other than the generation of electricity*  
17 *for commercial use.*

18              “(D) *Sales or transfers to the Department of En-*  
19 *ergy research reactor sales program.*

20              “(E) *Sales or transfers, at fair market value, for*  
21 *emergency purposes in the event of a disruption in*  
22 *supply to commercial nuclear power end users in the*  
23 *United States.*



1           “(F) Sales or transfers, at fair market value, for  
2           use in a commercial reactor in the United States with  
3           nonstandard fuel requirements.

4           “(G) Sales or transfers provided for under law  
5           for use by the Tennessee Valley Authority in relation  
6           to the Department of Energy’s highly enriched ura-  
7           nium or tritium programs.

8           “(6) For purposes of this subsection, the term ‘United  
9           States Government’ does not include the Tennessee Valley  
10          Authority.

11          “(e) SAVINGS PROVISION.—Nothing in this subchapter  
12          modifies the terms of the Russian HEU Agreement.

13          “(f) SERVICES.—Notwithstanding any other provision  
14          of this section, if the Secretary determines that the Corpora-  
15          tion has failed, or may fail, to perform any obligation  
16          under the Agreement between the Department of Energy  
17          and the Corporation dated June 17, 2002, and as amended  
18          thereafter, which failure could result in termination of the  
19          Agreement, the Secretary shall notify Congress, in such a  
20          manner that affords Congress an opportunity to comment,  
21          prior to a determination by the Secretary whether termi-  
22          nation, waiver, or modification of the Agreement is re-  
23          quired. The Secretary is authorized to take such action as  
24          he determines necessary under the Agreement to terminate,

1 *waive, or modify provisions of the Agreement to achieve its*  
 2 *purposes.”.*

3 *(b) REPORT.—Not later than 3 years after the date*  
 4 *of enactment of this Act, the Secretary of Energy shall re-*  
 5 *port to Congress on the implementation of this section. The*  
 6 *report shall include a discussion of available excess ura-*  
 7 *nium inventories; all sales or transfers made by the United*  
 8 *States Government; the impact of such sales or transfers*  
 9 *on the domestic uranium industry, the spot market ura-*  
 10 *nium price, and the national security interests of the*  
 11 *United States; and any steps taken to remediate any ad-*  
 12 *verse impacts of such sales or transfers.*

13 **§631. Cooperative research and development and spe-**  
 14 **cial demonstration projects for the ura-**  
 15 **nium mining industry**

16 *(a) AUTHORIZATION OF APPROPRIATIONS.—There are*  
 17 *authorized to be appropriated to the Secretary of Energy*  
 18 *\$10,000,000 for each of fiscal years 2006, 2007, and 2008*  
 19 *for—*

20 *(1) cooperative, cost-shared agreements between*  
 21 *the Department of Energy and domestic uranium*  
 22 *producers to identify, test, and develop improved in*  
 23 *situ leaching mining technologies, including low-cost*  
 24 *environmental restoration technologies that may be*

1       *applied to sites after completion of in situ leaching*  
 2       *operations; and*

3               *(2) funding for competitively selected demonstra-*  
 4       *tion projects with domestic uranium producers relat-*  
 5       *ing to—*

6                       *(A) enhanced production with minimal en-*  
 7       *vironmental impacts;*

8                       *(B) restoration of well fields; and*

9                       *(C) decommissioning and decontamination*  
 10       *activities.*

11       *(b) DOMESTIC URANIUM PRODUCER.—For purposes of*  
 12       *this section, the term “domestic uranium producer” has the*  
 13       *meaning given that term in section 1018(4) of the Energy*  
 14       *Policy Act of 1992 (42 U.S.C. 2296b–7(4)), except that the*  
 15       *term shall not include any producer that has not produced*  
 16       *uranium from domestic reserves on or after July 30, 1998.*

17       *(c) LIMITATION.—No activities funded under this sec-*  
 18       *tion may be carried out in the State of New Mexico.*

19       **§ 632. Whistleblower protection**

20       *(a) DEFINITION OF EMPLOYER.—Section 211(a)(2) of*  
 21       *the Energy Reorganization Act of 1974 (42 U.S.C.*  
 22       *5851(a)(2)) is amended—*

23               *(1) in subparagraph (C), by striking “and” at*  
 24       *the end;*

1           (2) in subparagraph (D), by striking the period  
2           at the end and inserting “; and” and

3           (3) by adding at the end the following:

4                   “(E) a contractor or subcontractor of the  
5           Commission.”.

6           (b) *DE NOVO REVIEW*.—Subsection (b) of such section  
7 211 is amended by adding at the end the following new  
8 paragraph:

9                   “(4) If the Secretary has not issued a final deci-  
10          sion within 540 days after the filing of a complaint  
11          under paragraph (1), and there is no showing that  
12          such delay is due to the bad faith of the person seek-  
13          ing relief under this paragraph, such person may  
14          bring an action at law or equity for de novo review  
15          in the appropriate district court of the United States,  
16          which shall have jurisdiction over such an action  
17          without regard to the amount in controversy.”.

18 **§ 633. Medical isotope production**

19          Section 134 of the Atomic Energy Act of 1954 (42  
20 U.S.C. 2160d) is amended—

21               (1) in subsection a., by striking “a. The Commis-  
22          sion” and inserting “a. *IN GENERAL*.—Except as  
23          provided in subsection b., the Commission”;

24               (2) by redesignating subsection b. as subsection  
25          c.; and

1           (3) by inserting after subsection a. the following:

2           “b. *MEDICAL ISOTOPE PRODUCTION.*—

3           “(1) *DEFINITIONS.*—In this subsection:

4           “(A) *HIGHLY ENRICHED URANIUM.*—The  
5           term ‘highly enriched uranium’ means uranium  
6           enriched to include concentration of U-235 above  
7           20 percent.

8           “(B) *MEDICAL ISOTOPE.*—The term ‘med-  
9           ical isotope’ includes Molybdenum 99, Iodine  
10          131, Xenon 133, and other radioactive materials  
11          used to produce a radiopharmaceutical for diag-  
12          nostic, therapeutic procedures or for research and  
13          development.

14          “(C) *RADIOPHARMACEUTICAL.*—The term  
15          ‘radiopharmaceutical’ means a radioactive iso-  
16          tope that—

17                 “(i) contains byproduct material com-  
18                 bined with chemical or biological material;  
19                 and

20                 “(ii) is designed to accumulate tempo-  
21                 rarily in a part of the body for therapeutic  
22                 purposes or for enabling the production of a  
23                 useful image for use in a diagnosis of a  
24                 medical condition.

1                   “(D) *RECIPIENT COUNTRY*.—The term ‘re-  
2                   *ipient country*’ means Canada, Belgium,  
3                   *France, Germany, and the Netherlands.*

4                   “(2) *LICENSES*.—The Commission may issue a  
5                   *license authorizing the export (including shipment to*  
6                   *and use at intermediate and ultimate consignees spec-*  
7                   *ified in the license) to a recipient country of highly*  
8                   *enriched uranium for medical isotope production if,*  
9                   *in addition to any other requirements of this Act (ex-*  
10                  *cept subsection a.), the Commission determines that—*

11                  “(A) *a recipient country that supplies an*  
12                  *assurance letter to the United States Government*  
13                  *in connection with the consideration by the Com-*  
14                  *mission of the export license application has in-*  
15                  *formed the United States Government that any*  
16                  *intermediate consignees and the ultimate con-*  
17                  *signee specified in the application are required*  
18                  *to use the highly enriched uranium solely to*  
19                  *produce medical isotopes; and*

20                  “(B) *the highly enriched uranium for med-*  
21                  *ical isotope production will be irradiated only in*  
22                  *a reactor in a recipient country that—*

23                         “(i) *uses an alternative nuclear reactor*  
24                         *fuel; or*

1                   “(ii) is the subject of an agreement  
2                   with the United States Government to con-  
3                   vert to an alternative nuclear reactor fuel  
4                   when alternative nuclear reactor fuel can be  
5                   used in the reactor.

6                   “(3) REVIEW OF PHYSICAL PROTECTION RE-  
7                   QUIREMENTS.—

8                   “(A) IN GENERAL.—The Commission shall  
9                   review the adequacy of physical protection re-  
10                  quirements that, as of the date of an application  
11                  under paragraph (2), are applicable to the trans-  
12                  portation and storage of highly enriched ura-  
13                  nium for medical isotope production or control  
14                  of residual material after irradiation and extrac-  
15                  tion of medical isotopes.

16                  “(B) IMPOSITION OF ADDITIONAL REQUIRE-  
17                  MENTS.—If the Commission determines that ad-  
18                  ditional physical protection requirements are  
19                  necessary (including a limit on the quantity of  
20                  highly enriched uranium that may be contained  
21                  in a single shipment), the Commission shall im-  
22                  pose such requirements as license conditions or  
23                  through other appropriate means.

24                  “(4) FIRST REPORT TO CONGRESS.—

1           “(A) *NAS STUDY.*—*The Secretary shall*  
2           *enter into an arrangement with the National*  
3           *Academy of Sciences to conduct a study to deter-*  
4           *mine—*

5                     “(i) *the feasibility of procuring sup-*  
6                     *plies of medical isotopes from commercial*  
7                     *sources that do not use highly enriched ura-*  
8                     *anium;*

9                     “(ii) *the current and projected demand*  
10                    *and availability of medical isotopes in reg-*  
11                    *ular current domestic use;*

12                    “(iii) *the progress that is being made*  
13                    *by the Department of Energy and others to*  
14                    *eliminate all use of highly enriched ura-*  
15                    *anium in reactor fuel, reactor targets, and*  
16                    *medical isotope production facilities; and*

17                    “(iv) *the potential cost differential in*  
18                    *medical isotope production in the reactors*  
19                    *and target processing facilities if the prod-*  
20                    *ucts were derived from production systems*  
21                    *that do not involve fuels and targets with*  
22                    *highly enriched uranium.*

23           “(B) *FEASIBILITY.*—*For the purpose of this*  
24           *subsection, the use of low enriched uranium to*



1        *produce medical isotopes shall be determined to*  
2        *be feasible if—*

3                *“(i) low enriched uranium targets have*  
4                *been developed and demonstrated for use in*  
5                *the reactors and target processing facilities*  
6                *that produce significant quantities of med-*  
7                *ical isotopes to serve United States needs for*  
8                *such isotopes;*

9                *“(ii) sufficient quantities of medical*  
10               *isotopes are available from low enriched*  
11               *uranium targets and fuel to meet United*  
12               *States domestic needs; and*

13               *“(iii) the average anticipated total cost*  
14               *increase from production of medical isotopes*  
15               *in such facilities without use of highly en-*  
16               *riched uranium is less than 10 percent.*

17               *“(C) REPORT BY THE SECRETARY.—Not*  
18               *later than 5 years after the date of enactment of*  
19               *the Energy Policy Act of 2005, the Secretary*  
20               *shall submit to Congress a report that—*

21               *“(i) contains the findings of the Na-*  
22               *tional Academy of Sciences made in the*  
23               *study under subparagraph (A); and*

24               *“(ii) discloses the existence of any com-*  
25               *mitments from commercial producers to*

1           *provide domestic requirements for medical*  
2           *isotopes without use of highly enriched ura-*  
3           *anium consistent with the feasibility criteria*  
4           *described in subparagraph (B) not later*  
5           *than the date that is 4 years after the date*  
6           *of submission of the report.*

7           “(5) *SECOND REPORT TO CONGRESS.—If the*  
8           *study of the National Academy of Sciences determines*  
9           *under paragraph (4)(A)(i) that the procurement of*  
10          *supplies of medical isotopes from commercial sources*  
11          *that do not use highly enriched uranium is feasible,*  
12          *but the Secretary is unable to report the existence of*  
13          *commitments under paragraph (4)(C)(ii), not later*  
14          *than the date that is 6 years after the date of enact-*  
15          *ment of the Energy Policy Act of 2005, the Secretary*  
16          *shall submit to Congress a report that describes op-*  
17          *tions for developing domestic supplies of medical iso-*  
18          *topes in quantities that are adequate to meet domestic*  
19          *demand without the use of highly enriched uranium*  
20          *consistent with the cost increase described in para-*  
21          *graph (4)(B)(iii).*

22          “(6) *CERTIFICATION.—At such time as commer-*  
23          *cial facilities that do not use highly enriched ura-*  
24          *anium are capable of meeting domestic requirements*  
25          *for medical isotopes, within the cost increase described*

1       in paragraph (4)(B)(iii) and without impairing the  
 2       reliable supply of medical isotopes for domestic utili-  
 3       zation, the Secretary shall submit to Congress a cer-  
 4       tification to that effect.

5               “(7) *SUNSET PROVISION.*—After the Secretary  
 6       submits a certification under paragraph (6), the  
 7       Commission shall, by rule, terminate its review of ex-  
 8       port license applications under this subsection.”.

9       **§ 634. Fernald byproduct material**

10       *Title III of the Nuclear Waste Policy Act of 1982 (42*  
 11       *U.S.C. 10221 et seq.) is amended by adding at the end the*  
 12       *following new section:*

13               “*FERNALD BYPRODUCT MATERIAL*

14       “*SEC. 307. Notwithstanding any other law, the mate-*  
 15       *rial in the concrete silos at the Fernald uranium processing*  
 16       *facility managed on the date of enactment of this section*  
 17       *by the Department shall be considered byproduct material*  
 18       *(as defined by section 11 e.(2) of the Atomic Energy Act*  
 19       *of 1954 (42 U.S.C. 2014(e)(2))). The Department may dis-*  
 20       *pose of the material in a facility regulated by the Commis-*  
 21       *sion or by an Agreement State. If the Department disposes*  
 22       *of the material in such a facility, the Commission or the*  
 23       *Agreement State shall regulate the material as byproduct*  
 24       *material under that Act. This material shall remain subject*  
 25       *to the jurisdiction of the Department until it is received*  
 26       *at a commercial, Commission-licensed, or Agreement State-*

1 *licensed facility, at which time the material shall be subject*  
 2 *to the health and safety requirements of the Commission*  
 3 *or the Agreement State with jurisdiction over the disposal*  
 4 *site.”.*

5 **§635. Safe disposal of greater-than-class c radio-**  
 6 **active waste**

7 *Subtitle D of title I of the Nuclear Waste Policy Act*  
 8 *of 1982 (42 U.S.C. 10171) is amended by adding at the*  
 9 *end the following new section:*

10 “SAFE DISPOSAL OF GREATER-THAN-CLASS C RADIOACTIVE  
 11 WASTE

12 “SEC. 152. (a) DESIGNATION OF RESPONSIBILITY.—  
 13 *The Secretary shall designate an Office within the Depart-*  
 14 *ment to have the responsibility for activities needed to de-*  
 15 *velop a new, or use an existing, facility for safely disposing*  
 16 *of all low-level radioactive waste with concentrations of*  
 17 *radionuclides that exceed the limits established by the Com-*  
 18 *mission for Class C radioactive waste (referred to in this*  
 19 *section as ‘GTCC waste’).*

20 “(b) COMPREHENSIVE PLAN.—*The Secretary shall de-*  
 21 *velop a comprehensive plan for permanent disposal of*  
 22 *GTCC waste which includes plans for a disposal facility.*  
 23 *This plan shall be transmitted to Congress in a series of*  
 24 *reports, including the following:*

25 “(1) REPORT ON SHORT-TERM PLAN.—*Not later*  
 26 *than 180 days after the date of enactment of this sec-*

1        *tion, the Secretary shall submit to Congress a plan*  
2        *describing the Secretary's operational strategy for*  
3        *continued recovery and storage of GTCC waste until*  
4        *a permanent disposal facility is available.*

5            *“(2) UPDATE OF 1987 REPORT.—*

6            *“(A) IN GENERAL.—Not later than 1 year*  
7        *after the date of enactment of this section, the*  
8        *Secretary shall submit to Congress an update of*  
9        *the Secretary's February 1987 report submitted*  
10       *to Congress that made comprehensive rec-*  
11       *ommendations for the disposal of GTCC waste.*

12           *“(B) CONTENTS.—The update under this*  
13        *paragraph shall contain—*

14           *“(i) a detailed description and identi-*  
15        *fication of the GTCC waste that is to be dis-*  
16        *posed;*

17           *“(ii) a description of current domestic*  
18        *and international programs, both Federal*  
19        *and commercial, for management and dis-*  
20        *position of GTCC waste;*

21           *“(iii) an identification of the Federal*  
22        *and private options and costs for the safe*  
23        *disposal of GTCC waste;*

24           *“(iv) an identification of the options*  
25        *for ensuring that, wherever possible, genera-*

tors and users of GTCC waste bear all reasonable costs of waste disposal;

“(v) an identification of any new statutory authority required for disposal of GTCC waste; and

“(vi) in coordination with the Environmental Protection Agency and the Commission, an identification of any new regulatory guidance needed for the disposal of GTCC waste.

“(3) *REPORT ON COST AND SCHEDULE FOR COMPLETION OF ENVIRONMENTAL IMPACT STATEMENT AND RECORD OF DECISION.*—Not later than 180 days after the date of submission of the update required under paragraph (2), the Secretary shall submit to Congress a report containing an estimate of the cost and schedule to complete a draft and final environmental impact statement and to issue a record of decision for a permanent disposal facility, utilizing either a new or existing facility, for GTCC waste.”.

**§ 636. Prohibition on nuclear exports to countries that sponsor terrorism**

(a) *IN GENERAL.*—Section 129 of the Atomic Energy Act of 1954 (42 U.S.C. 2158) is amended—

1           (1) by inserting “a.” before “No nuclear mate-  
2       rials and equipment”; and

3           (2) by adding at the end the following new sub-  
4       section:

5       “b.(1) Notwithstanding any other provision of law, in-  
6       cluding specifically section 121 of this Act, and except as  
7       provided in paragraphs (2) and (3), no nuclear materials  
8       and equipment or sensitive nuclear technology, including  
9       items and assistance authorized by section 57 b. of this Act  
10      and regulated under part 810 of title 10, Code of Federal  
11      Regulations, and nuclear-related items on the Commerce  
12      Control List maintained under part 774 of title 15 of the  
13      Code of Federal Regulations, shall be exported or reexported,  
14      or transferred or retransferred whether directly or indi-  
15      rectly, and no Federal agency shall issue any license, ap-  
16      proval, or authorization for the export or reexport, or trans-  
17      fer, or retransfer, whether directly or indirectly, of these  
18      items or assistance (as defined in this paragraph) to any  
19      country whose government has been identified by the Sec-  
20      retary of State as engaged in state sponsorship of terrorist  
21      activities (specifically including any country the govern-  
22      ment of which has been determined by the Secretary of State  
23      under section 620A(a) of the Foreign Assistance Act of 1961  
24      (22 U.S.C. 2371(a)), section 6(j)(1) of the Export Adminis-  
25      tration Act of 1979 (50 U.S.C. App. 2405(j)(1)), or section

1 40(d) of the Arms Export Control Act (22 U.S.C. 2780(d))  
2 to have repeatedly provided support for acts of inter-  
3 national terrorism).

4 “(2) This subsection shall not apply to exports, reex-  
5 ports, transfers, or retransfers of radiation monitoring tech-  
6 nologies, surveillance equipment, seals, cameras, tamper-in-  
7 dication devices, nuclear detectors, monitoring systems, or  
8 equipment necessary to safely store, transport, or remove  
9 hazardous materials, whether such items, services, or infor-  
10 mation are regulated by the Department of Energy, the De-  
11 partment of Commerce, or the Nuclear Regulatory Commis-  
12 sion, except to the extent that such technologies, equipment,  
13 seals, cameras, devices, detectors, or systems are available  
14 for use in the design or construction of nuclear reactors or  
15 nuclear weapons.

16 “(3) The President may waive the application of para-  
17 graph (1) to a country if the President determines and cer-  
18 tifies to Congress that the waiver will not result in any  
19 increased risk that the country receiving the waiver will  
20 acquire nuclear weapons, nuclear reactors, or any materials  
21 or components of nuclear weapons and—

22 “(A) the government of such country has not  
23 within the preceding 12-month period willfully aided  
24 or abetted the international proliferation of nuclear  
25 explosive devices to individuals or groups or willfully



1        *aided and abetted an individual or groups in acquir-*  
 2        *ing unsafeguarded nuclear materials;*

3            *“(B) in the judgment of the President, the gov-*  
 4        *ernment of such country has provided adequate,*  
 5        *verifiable assurances that it will cease its support for*  
 6        *acts of international terrorism;*

7            *“(C) the waiver of that paragraph is in the vital*  
 8        *national security interest of the United States; or*

9            *“(D) such a waiver is essential to prevent or re-*  
 10        *spond to a serious radiological hazard in the country*  
 11        *receiving the waiver that may or does threaten public*  
 12        *health and safety.”.*

13        *(b) APPLICABILITY TO EXPORTS APPROVED FOR*  
 14        *TRANSFER BUT NOT TRANSFERRED.—Subsection b. of sec-*  
 15        *tion 129 of Atomic Energy Act of 1954, as added by sub-*  
 16        *section (a) of this section, shall apply with respect to ex-*  
 17        *ports that have been approved for transfer as of the date*  
 18        *of the enactment of this Act but have not yet been trans-*  
 19        *ferred as of that date.*

20        **§ 638. National uranium stockpile**

21        *The USEC Privatization Act (42 U.S.C. 2297h et seq.)*  
 22        *is amended by adding at the end the following new section:*

1 **“SEC. 3118. NATIONAL URANIUM STOCKPILE.**

2       “(a) *STOCKPILE CREATION.*—*The Secretary of Energy*  
3 *may create a national low-enriched uranium stockpile with*  
4 *the goals to—*

5               “(1) *enhance national energy security; and*

6               “(2) *reduce global proliferation threats.*

7       “(b) *SOURCE OF MATERIAL.*—*The Secretary shall ob-*  
8 *tain material for the stockpile from—*

9               “(1) *material derived from blend-down of Rus-*  
10 *sian highly enriched uranium derived from weapons*  
11 *materials; and*

12               “(2) *domestically mined and enriched uranium.*

13       “(c) *LIMITATION ON SALES OR TRANSFERS.*—*Sales or*  
14 *transfer of materials in the stockpile shall occur pursuant*  
15 *to section 3112.”.*

16 **§ 639. Nuclear Regulatory Commission meetings**

17       *If a quorum of the Nuclear Regulatory Commission*  
18 *gathers to discuss official Commission business the discus-*  
19 *sions shall be recorded, and the Commission shall notify the*  
20 *public of such discussions within 15 days after they occur.*  
21 *The Commission shall promptly make a transcript of the*  
22 *recording available to the public on request, except to the*  
23 *extent that public disclosure is exempted or prohibited by*  
24 *law. This section shall not apply to a meeting, within the*  
25 *meaning of that term under section 552b(a)(2) of title 5,*  
26 *United States Code.*

1 **§ 640. Employee benefits**

2       *Section 3110(a) of the USEC Privatization Act (42*  
3 *U.S.C. 2297h-8(a)) is amended by adding at the end the*  
4 *following new paragraph:*

5       “(8) *CONTINUITY OF BENEFITS.*—*Not later than 30*  
6 *days after the date of enactment of this paragraph, the Sec-*  
7 *retary shall implement such actions as are necessary to en-*  
8 *sure that any employee who—*

9               “(A) *is involved in providing infrastructure or*  
10 *environmental remediation services at the Ports-*  
11 *mouth, Ohio, or the Paducah, Kentucky, Gaseous Dif-*  
12 *fusion Plant;*

13               “(B) *has been an employee of the Department of*  
14 *Energy’s predecessor management and integrating*  
15 *contractor (or its first or second tier subcontractors),*  
16 *or of the Corporation, at the Portsmouth, Ohio, or the*  
17 *Paducah, Kentucky, facility; and*

18               “(C) *was eligible as of April 1, 2005, to partici-*  
19 *rate in or transfer into the Multiple Employer Pen-*  
20 *sion Plan or the associated multiple employer retiree*  
21 *health care benefit plans, as defined in those plans,*  
22 *shall continue to be eligible to participate in or transfer*  
23 *into such pension or health care benefit plans.”.*

1       **Subtitle C—Additional Hydrogen Production**

2                   **Provisions**

3   **§ 651. Hydrogen production programs**

4       (a) *ADVANCED REACTOR HYDROGEN COGENERATION*

5   *PROJECT.*—

6           (1) *PROJECT ESTABLISHMENT.*— *The Secretary*  
7       *is directed to establish an Advanced Reactor Hydro-*  
8       *gen Cogeneration Project.*

9           (2) *PROJECT DEFINITION.*— *The project shall*  
10      *consist of the research, development, design, construc-*  
11      *tion, and operation of a hydrogen production cogen-*  
12      *eration research facility that, relative to the current*  
13      *commercial reactors, enhances safety features, reduces*  
14      *waste production, enhances thermal efficiencies, in-*  
15      *creases proliferation resistance, and has the potential*  
16      *for improved economics and physical security in reac-*  
17      *tor siting. This facility shall be constructed so as to*  
18      *enable research and development on advanced reactors*  
19      *of the type selected and on alternative approaches for*  
20      *reactor-based production of hydrogen.*

21          (3) *PROJECT MANAGEMENT.*—

22           (A) *MANAGEMENT.*—*The project shall be*  
23       *managed within the Department by the Office of*  
24       *Nuclear Energy, Science, and Technology.*

25           (B) *LEAD LABORATORY.*—*The lead labora-*  
26       *tory for the project, providing the site for the re-*

actor construction, shall be the Idaho National Laboratory (in this subsection referred to as “INL”).

(C) *STEERING COMMITTEE.*—The Secretary shall establish a national steering committee with membership from the national laboratories, universities, and industry to provide advice to the Secretary and the Director of the Office of Nuclear Energy, Science, and Technology on technical and program management aspects of the project.

(D) *COLLABORATION.*—Project activities shall be conducted at INL, other national laboratories, universities, domestic industry, and international partners.

(4) *PROJECT REQUIREMENTS.*—

(A) *RESEARCH AND DEVELOPMENT.*—

(i) *IN GENERAL.*—The project shall include planning, research and development, design, and construction of an advanced, next-generation, nuclear energy system suitable for enabling further research and development on advanced reactor technologies and alternative approaches for reactor-based generation of hydrogen.

1                   (ii) *REACTOR TEST CAPABILITIES AT*  
2 *INL.—The project shall utilize, where appro-*  
3 *priate, extensive reactor test capabilities*  
4 *resident at INL.*

5                   (iii) *ALTERNATIVES.—The project shall*  
6 *be designed to explore technical, environ-*  
7 *mental, and economic feasibility of alter-*  
8 *native approaches for reactor-based hydro-*  
9 *gen production.*

10                  (iv) *INDUSTRIAL LEAD.—The indus-*  
11 *trial lead for the project shall be a company*  
12 *incorporated in the United States.*

13                  (B) *INTERNATIONAL COLLABORATION.—*

14                   (i) *IN GENERAL.—The Secretary shall*  
15 *seek international cooperation, participa-*  
16 *tion, and financial contribution in this*  
17 *project.*

18                   (ii) *ASSISTANCE FROM INTERNATIONAL*  
19 *PARTNERS.—The Secretary may contract*  
20 *for assistance from specialists or facilities*  
21 *from member countries of the Generation IV*  
22 *International Forum, the Russian Federa-*  
23 *tion, or other international partners where*  
24 *such specialists or facilities provide access*

1           to cost-effective and relevant skills or test  
2           capabilities.

3           (iii) *GENERATION IV INTERNATIONAL*  
4           *FORUM.*—*International activities shall be*  
5           *coordinated with the Generation IV Inter-*  
6           *national Forum.*

7           (iv) *GENERATION IV NUCLEAR ENERGY*  
8           *SYSTEMS PROGRAM.*—*The Secretary may*  
9           *combine this project with the Generation IV*  
10          *Nuclear Energy Systems Program.*

11          (C) *DEMONSTRATION.*—*The overall project,*  
12          *which may involve demonstration of selected*  
13          *project objectives in a partner nation, must dem-*  
14          *onstrate both electricity and hydrogen production*  
15          *and may provide flexibility, where technically*  
16          *and economically feasible in the design and con-*  
17          *struction, to enable tests of alternative reactor*  
18          *core and cooling configurations.*

19          (D) *PARTNERSHIPS.*—*The Secretary shall*  
20          *establish cost-shared partnerships with domestic*  
21          *industry or international participants for the re-*  
22          *search, development, design, construction, and*  
23          *operation of the research facility, and preference*  
24          *in determining the final project structure shall*  
25          *be given to an overall project which retains*

1        *United States leadership while maximizing cost*  
2        *sharing opportunities and minimizing Federal*  
3        *funding responsibilities.*

4                (E) *TARGET DATE.*—*The Secretary shall se-*  
5        *lect technologies and develop the project to pro-*  
6        *vide initial testing of either hydrogen production*  
7        *or electricity generation by 2011, or provide a*  
8        *report to Congress explaining why this date is*  
9        *not feasible.*

10              (F)        *WAIVER        OF        CONSTRUCTION*  
11        *TIMELINES.*—*The Secretary is authorized to con-*  
12        *duct the Advanced Reactor Hydrogen Cogenera-*  
13        *tion Project without the constraints of DOE*  
14        *Order 413.3, relating to program and project*  
15        *management for the acquisition of capital assets,*  
16        *as necessary to meet the specified operational*  
17        *date.*

18              (G)    *COMPETITION.*—*The Secretary may*  
19        *fund up to 2 teams for up to 1 year to develop*  
20        *detailed proposals for competitive evaluation and*  
21        *selection of a single proposal and concept for fur-*  
22        *ther progress. The Secretary shall define the for-*  
23        *mat of the competitive evaluation of proposals.*

24              (H)    *USE OF FACILITIES.*—*Research facili-*  
25        *ties in industry, national laboratories, or univer-*



1        *sities either within the United States or with co-*  
2        *operating international partners may be used to*  
3        *develop the enabling technologies for the research*  
4        *facility. Utilization of domestic university-based*  
5        *facilities shall be encouraged to provide edu-*  
6        *cational opportunities for student development.*

7                *(I) ROLE OF NUCLEAR REGULATORY COM-*  
8        *MISSION.—*

9                *(i) IN GENERAL.—The Nuclear Regu-*  
10        *latory Commission shall have licensing and*  
11        *regulatory authority for any reactor author-*  
12        *ized under this subsection, pursuant to sec-*  
13        *tion 202 of the Energy Reorganization Act*  
14        *of 1974 (42 U.S.C. 5842).*

15               *(ii) RISK-BASED CRITERIA.—The Sec-*  
16        *retary shall seek active participation of the*  
17        *Nuclear Regulatory Commission throughout*  
18        *the project to develop risk-based criteria for*  
19        *any future commercial development of a*  
20        *similar reactor architecture.*

21               *(J) REPORT.—The Secretary shall develop*  
22        *and transmit to Congress a comprehensive*  
23        *project plan not later than 3 months after the*  
24        *date of enactment of this Act. The project plan*

1           *shall be updated annually with each annual*  
2           *budget submission.*

3           ***(b) ADVANCED NUCLEAR REACTOR TECHNOLOGIES.—***

4   *The Secretary shall—*

5           *(1) prepare a detailed roadmap for carrying out*  
6           *the provisions in this subtitle related to advanced nu-*  
7           *clear reactor technologies and for implementing the*  
8           *recommendations related to advanced nuclear reactor*  
9           *technologies that are included in the report trans-*  
10          *mitted under subsection (d); and*

11          *(2) provide for the establishment of 5 projects in*  
12          *geographic areas that are regionally and climatically*  
13          *diverse to demonstrate the commercial production of*  
14          *hydrogen at existing nuclear power plants, including*  
15          *one demonstration project at a national laboratory or*  
16          *institution of higher education using an advanced*  
17          *gas-cooled reactor.*

18          ***(c) COLLOCATION WITH HYDROGEN PRODUCTION FA-***  
19          ***CILITY.—****Section 103 of the Atomic Energy Act of 1954 (42*  
20          *U.S.C. 2011) is amended by adding at the end the following*  
21          *new subsection:*

22          *“g. The Commission shall give priority to the licensing*  
23          *of a utilization facility that is collocated with a hydrogen*  
24          *production facility. The Commission shall issue a final de-*  
25          *cision approving or disapproving the issuance of a license*

1 *to construct and operate a utilization facility not later than*  
2 *the expiration of 3 years after the date of the submission*  
3 *of such application, if the application references a Commis-*  
4 *sion-certified design and an early site permit, unless the*  
5 *Commission determines that the applicant has proposed*  
6 *material and substantial changes to the design or the site*  
7 *design parameters.”.*

8       (d) *REPORT.—The Secretary shall transmit to the*  
9 *Congress not later than 120 days after the date of enactment*  
10 *of this Act a report containing detailed summaries of the*  
11 *roadmaps prepared under subsection (b)(1), descriptions of*  
12 *the Secretary’s progress in establishing the projects and*  
13 *other programs required under this section, and rec-*  
14 *ommendations for promoting the availability of advanced*  
15 *nuclear reactor energy technologies for the production of hy-*  
16 *drogen.*

17       (e) *AUTHORIZATION OF APPROPRIATIONS.—For the*  
18 *purpose of supporting research programs related to the de-*  
19 *velopment of advanced nuclear reactor technologies under*  
20 *this section, there are authorized to be appropriated to the*  
21 *Secretary—*

- 22               (1) *\$65,000,000 for fiscal year 2006;*  
23               (2) *\$74,750,000 for fiscal year 2007;*  
24               (3) *\$85,962,500 for fiscal year 2008;*  
25               (4) *\$98,856,875 for fiscal year 2009;*

- 1           (5) \$113,685,406 for fiscal year 2010;  
2           (6) \$130,738,217 for fiscal year 2011;  
3           (7) \$150,348,950 for fiscal year 2012;  
4           (8) \$172,901,292 for fiscal year 2013;  
5           (9) \$198,836,486 for fiscal year 2014; and  
6           (10) \$228,661,959 for fiscal year 2015.

7   **§ 652. Definitions**

8       *For purposes of this subtitle—*

9           (1) the term “advanced nuclear reactor tech-  
10       *nologies” means—*

11               (A) *technologies related to advanced light*  
12               *water reactors that may be commercially avail-*  
13               *able in the near-term, including mid-sized reac-*  
14               *tors with passive safety features, for the genera-*  
15               *tion of electric power from nuclear fission and*  
16               *the production of hydrogen; and*

17               (B) *technologies related to other nuclear re-*  
18               *actors that may require prototype demonstration*  
19               *prior to availability in the mid-term or long-*  
20               *term, including high-temperature, gas-cooled re-*  
21               *actors and liquid metal reactors, for the genera-*  
22               *tion of electric power from nuclear fission and*  
23               *the production of hydrogen;*

24           (2) the term “institution of higher education”  
25       *has the meaning given to that term in section 101(a)*

1       *of the Higher Education Act of 1965 (20 U.S.C.*  
2       *1001(a)); and*

3               *(3) the term “Secretary” means the Secretary of*  
4       *Energy.*

5                       ***Subtitle D—Nuclear Security***

6       ***§ 661. Nuclear facility threats***

7       *(a) STUDY.—The President, in consultation with the*  
8       *Nuclear Regulatory Commission (referred to in this subtitle*  
9       *as the “Commission”) and other appropriate Federal,*  
10       *State, and local agencies and private entities, shall conduct*  
11       *a study to identify the types of threats that pose an appre-*  
12       *ciable risk to the security of the various classes of facilities*  
13       *licensed by the Commission under the Atomic Energy Act*  
14       *of 1954 (42 U.S.C. 2011 et seq.). Such study shall take into*  
15       *account, but not be limited to—*

16               *(1) the events of September 11, 2001;*

17               *(2) an assessment of physical, cyber, biochemical,*  
18       *and other terrorist threats;*

19               *(3) the potential for attack on facilities by mul-*  
20       *tiple coordinated teams of a large number of individ-*  
21       *uals;*

22               *(4) the potential for assistance in an attack from*  
23       *several persons employed at the facility;*

24               *(5) the potential for suicide attacks;*

1           (6) *the potential for water-based and air-based*  
2     *threats;*

3           (7) *the potential use of explosive devices of con-*  
4     *siderable size and other modern weaponry;*

5           (8) *the potential for attacks by persons with a*  
6     *sophisticated knowledge of facility operations;*

7           (9) *the potential for fires, especially fires of long*  
8     *duration;*

9           (10) *the potential for attacks on spent fuel ship-*  
10    *ments by multiple coordinated teams of a large num-*  
11    *ber of individuals;*

12          (11) *the adequacy of planning to protect the pub-*  
13    *lic health and safety at and around nuclear facilities,*  
14    *as appropriate, in the event of a terrorist attack*  
15    *against a nuclear facility; and*

16          (12) *the potential for theft and diversion of nu-*  
17    *clear materials from such facilities.*

18       (b) *SUMMARY AND CLASSIFICATION REPORT.—Not*  
19    *later than 180 days after the date of the enactment of this*  
20    *Act, the President shall transmit to Congress and the Com-*  
21    *mission a report—*

22           (1) *summarizing the types of threats identified*  
23    *under subsection (a); and*

1           (2) *classifying each type of threat identified*  
2           *under subsection (a), in accordance with existing laws*  
3           *and regulations, as either—*

4                   (A) *involving attacks and destructive acts,*  
5                   *including sabotage, directed against the facility*  
6                   *by an enemy of the United States, whether a for-*  
7                   *ign government or other person, or otherwise*  
8                   *falling under the responsibilities of the Federal*  
9                   *Government; or*

10                   (B) *involving the type of risks that Com-*  
11                   *mission licensees should be responsible for guard-*  
12                   *ing against.*

13           (c) *FEDERAL ACTION REPORT.—Not later than 90*  
14           *days after the date on which a report is transmitted under*  
15           *subsection (b), the President shall transmit to Congress a*  
16           *report on actions taken, or to be taken, to address the types*  
17           *of threats identified under subsection (b)(2)(A), including*  
18           *identification of the Federal, State, and local agencies re-*  
19           *sponsible for carrying out the obligations and authorities*  
20           *of the United States. Such report may include a classified*  
21           *annex, as appropriate.*

22           (d) *REGULATIONS.—Not later than 180 days after the*  
23           *date on which a report is transmitted under subsection (b),*  
24           *the Commission may revise, by rule, the design basis threats*  
25           *issued before the date of enactment of this section as the*

1 *Commission considers appropriate based on the summary*  
2 *and classification report.*

3       (e) *PHYSICAL SECURITY PROGRAM.—The Commission*  
4 *shall establish an operational safeguards response evalua-*  
5 *tion program that ensures that the physical protection ca-*  
6 *pability and operational safeguards response for sensitive*  
7 *nuclear facilities, as determined by the Commission con-*  
8 *sistent with the protection of public health and the common*  
9 *defense and security, shall be tested periodically through*  
10 *Commission approved or designed, observed, and evaluated*  
11 *force-on-force exercises to determine whether the ability to*  
12 *defeat the design basis threat is being maintained. For pur-*  
13 *poses of this subsection, the term “sensitive nuclear facili-*  
14 *ties” includes at a minimum commercial nuclear power*  
15 *plants and category I fuel cycle facilities.*

16       (f) *CONTROL OF INFORMATION.—Notwithstanding any*  
17 *other provision of law, the Commission may undertake any*  
18 *rulemaking under this subtitle in a manner that will fully*  
19 *protect safeguards and classified national security informa-*  
20 *tion.*

21       (g) *FEDERAL SECURITY COORDINATORS.—*

22           (1) *REGIONAL OFFICES.—Not later than 18*  
23 *months after the date of enactment of this Act, the*  
24 *Commission shall assign a Federal security coordi-*



1       nator, under the employment of the Commission, to  
2       each region of the Commission.

3           (2) *RESPONSIBILITIES.*—*The Federal security*  
4       *coordinator shall be responsible for—*

5           (A) *communicating with the Commission*  
6       *and other Federal, State, and local authorities*  
7       *concerning threats, including threats against*  
8       *such classes of facilities as the Commission deter-*  
9       *mines to be appropriate;*

10          (B) *ensuring that such classes of facilities*  
11       *as the Commission determines to be appropriate*  
12       *maintain security consistent with the security*  
13       *plan in accordance with the appropriate threat*  
14       *level; and*

15          (C) *assisting in the coordination of security*  
16       *measures among the private security forces at*  
17       *such classes of facilities as the Commission deter-*  
18       *mines to be appropriate and Federal, State, and*  
19       *local authorities, as appropriate.*

20       (h) *TRAINING PROGRAM.*—*The President shall estab-*  
21       *lish a program to provide technical assistance and training*  
22       *to Federal agencies, the National Guard, and State and*  
23       *local law enforcement and emergency response agencies in*  
24       *responding to threats against a designated nuclear facility.*

1 **§662. Fingerprinting for criminal history record**  
 2 **checks**

3 (a) *IN GENERAL.*—Subsection a. of section 149 of the  
 4 Atomic Energy Act of 1954 (42 U.S.C. 2169(a)) is amend-  
 5 ed—

6 (1) by striking “a. The Nuclear” and all that fol-  
 7 lows through “section 147.” and inserting the fol-  
 8 lowing:

9 “a. *IN GENERAL.*—

10 “(1) *REQUIREMENTS.*—

11 “(A) *IN GENERAL.*—The Commission shall  
 12 require each individual or entity—

13 “(i) that is licensed or certified to en-  
 14 gage in an activity subject to regulation by  
 15 the Commission;

16 “(ii) that has filed an application for  
 17 a license or certificate to engage in an ac-  
 18 tivity subject to regulation by the Commis-  
 19 sion; or

20 “(iii) that has notified the Commis-  
 21 sion, in writing, of an intent to file an ap-  
 22 plication for licensing, certification, permit-  
 23 ting, or approval of a product or activity  
 24 subject to regulation by the Commission,  
 25 to fingerprint each individual described in sub-  
 26 paragraph (B) before the individual is permitted

1            *unescorted access or access, whichever is applica-*  
 2            *ble, as described in subparagraph (B).*

3            *“(B) INDIVIDUALS REQUIRED TO BE*  
 4            *FINGERPRINTED.—The Commission shall require*  
 5            *to be fingerprinted each individual who—*

6                    *“(i) is permitted unescorted access to—*

7                            *“(I) a utilization facility; or*

8                            *“(II) radioactive material or other*  
 9                            *property subject to regulation by the*  
 10                           *Commission that the Commission de-*  
 11                           *termines to be of such significance to*  
 12                           *the public health and safety or the*  
 13                           *common defense and security as to*  
 14                           *warrant fingerprinting and back-*  
 15                           *ground checks; or*

16                    *“(ii) is permitted access to safeguards*  
 17                           *information under section 147.”;*

18            *(2) by striking “All fingerprints obtained by a*  
 19            *licensee or applicant as required in the preceding sen-*  
 20            *tence” and inserting the following:*

21                    *“(2) SUBMISSION TO THE ATTORNEY GEN-*  
 22                    *ERAL.—All fingerprints obtained by an individual or*  
 23                    *entity as required in paragraph (1)”;*

24            *(3) by striking “The costs of any identification*  
 25            *and records check conducted pursuant to the pre-*

1       ceding sentence shall be paid by the licensee or appli-  
2       cant.” and inserting the following:

3               “(3) *COSTS.*—The costs of any identification and  
4       records check conducted pursuant to paragraph (1)  
5       shall be paid by the individual or entity required to  
6       conduct the fingerprinting under paragraph (1)(A).”;  
7       and

8               (4) by striking “Notwithstanding any other pro-  
9       vision of law, the Attorney General may provide all  
10      the results of the search to the Commission, and, in  
11      accordance with regulations prescribed under this sec-  
12      tion, the Commission may provide such results to the  
13      licensee or applicant submitting such fingerprints.”  
14      and inserting the following:

15              “(4) *PROVISION TO INDIVIDUAL OR ENTITY RE-*  
16      *QUIRED TO CONDUCT FINGERPRINTING.*—Notwith-  
17      standing any other provision of law, the Attorney  
18      General may provide all the results of the search to  
19      the Commission, and, in accordance with regulations  
20      prescribed under this section, the Commission may  
21      provide such results to the individual or entity re-  
22      quired to conduct the fingerprinting under paragraph  
23      (1)(A).”.

1       (b) *ADMINISTRATION*.—Subsection c. of section 149 of  
2   the Atomic Energy Act of 1954 (42 U.S.C. 2169(c)) is  
3   amended—

4           (1) by striking “, subject to public notice and  
5       comment, regulations—” and inserting “require-  
6       ments—”; and

7           (2) by striking, in paragraph (2)(B), “unescorted  
8       access to the facility of a licensee or applicant” and  
9       inserting “unescorted access to a utilization facility,  
10      radioactive material, or other property described in  
11      subsection a.(1)(B)”.

12      (c) *BIOMETRIC METHODS*.—Subsection d. of section  
13   149 of the Atomic Energy Act of 1954 (42 U.S.C. 2169(d))  
14   is redesignated as subsection e., and the following is inserted  
15   after subsection c.:

16      “d. *USE OF OTHER BIOMETRIC METHODS*.—The Com-  
17   mission may satisfy any requirement for a person to con-  
18   duct fingerprinting under this section using any other bio-  
19   metric method for identification approved for use by the  
20   Attorney General, after the Commission has approved the  
21   alternative method by rule.”.

1 **§ 663. Use of firearms by security personnel of licens-**  
2 **ees and certificate holders of the Commis-**  
3 **sion**

4 *Section 161 of the Atomic Energy Act of 1954 (42*  
5 *U.S.C. 2201) is amended by adding at the end the following*  
6 *subsection:*

7 *“(z)(1) notwithstanding section 922(o), (v), and*  
8 *(w) of title 18, United States Code, or any similar*  
9 *provision of any State law or any similar rule or reg-*  
10 *ulation of a State or any political subdivision of a*  
11 *State prohibiting the transfer or possession of a hand-*  
12 *gun, a rifle or shotgun, a short-barreled shotgun, a*  
13 *short-barreled rifle, a machinegun, a semiautomatic*  
14 *assault weapon, ammunition for the foregoing, or a*  
15 *large capacity ammunition feeding device, authorize*  
16 *security personnel of licensees and certificate holders*  
17 *of the Commission (including employees of contractors*  
18 *of licensees and certificate holders) to receive, possess,*  
19 *transport, import, and use 1 or more of those weap-*  
20 *ons, ammunition, or devices, if the Commission deter-*  
21 *mines that—*

22 *“(A) such authorization is necessary to the*  
23 *discharge of the security personnel’s official du-*  
24 *ties; and*

25 *“(B) the security personnel—*

1           “(i) are not otherwise prohibited from  
2           possessing or receiving a firearm under  
3           Federal or State laws pertaining to posses-  
4           sion of firearms by certain categories of per-  
5           sons;

6           “(ii) have successfully completed re-  
7           quirements established through guidelines  
8           implementing this subsection for training  
9           in use of firearms and tactical maneuvers;

10          “(iii) are engaged in the protection  
11          of—

12               “(I) facilities owned or operated  
13               by a Commission licensee or certificate  
14               holder that are designated by the Com-  
15               mission; or

16               “(II) radioactive material or other  
17               property owned or possessed by a per-  
18               son that is a licensee or certificate  
19               holder of the Commission, or that is  
20               being transported to or from a facility  
21               owned or operated by such a licensee or  
22               certificate holder, and that has been de-  
23               termined by the Commission to be of  
24               significance to the common defense and

1                   *security or public health and safety;*  
2                   *and*  
3                   *“(iv) are discharging their official du-*  
4                   *ties.*

5                   *“(2) Such receipt, possession, transportation, im-*  
6                   *portation, or use shall be subject to—*

7                   *“(A) chapter 44 of title 18, United States*  
8                   *Code, except for section 922(a)(4), (o), (v), and*  
9                   *(w);*

10                  *“(B) chapter 53 of title 26, United States*  
11                  *Code, except for section 5844; and*

12                  *“(C) a background check by the Attorney*  
13                  *General, based on fingerprints and including a*  
14                  *check of the system established under section*  
15                  *103(b) of the Brady Handgun Violence Preven-*  
16                  *tion Act (18 U.S.C. 922 note) to determine*  
17                  *whether the person applying for the authority is*  
18                  *prohibited from possessing or receiving a firearm*  
19                  *under Federal or State law.*

20                  *“(3) This subsection shall become effective upon*  
21                  *the issuance of guidelines by the Commission, with*  
22                  *the approval of the Attorney General, to govern the*  
23                  *implementation of this subsection.*

24                  *“(4) In this subsection, the terms ‘handgun’,*  
25                  *‘rifle’, ‘shotgun’, ‘firearm’, ‘ammunition’, ‘machine-*



8        *Section 229 a. of the Atomic Energy Act of 1954 (42*  
9        *U.S.C. 2278a(a)) is amended in the first sentence by insert-*  
10        *ing “or subject to the licensing authority of the Commission*  
11        *or to certification by the Commission under this Act or any*  
12        *other Act” before the period at the end.*

14 (a) IN GENERAL.—Section 236 a. of the Atomic En-  
15 ergy Act of 1954 (42 U.S.C. 2284(a)) is amended—

19                   (2) *in paragraph (3)—*

23 (B) by striking “or” at the end;

24 (3) in paragraph (4)—

1           (A) by striking “facility licensed” and in-  
2           serting “, uranium conversion, or nuclear fuel  
3           fabrication facility licensed or certified”; and

4           (B) by striking the comma at the end and  
5           inserting a semicolon; and

6           (4) by inserting after paragraph (4) the fol-  
7           lowing:

8           “(5) any production, utilization, waste storage,  
9           waste treatment, waste disposal, uranium enrichment,  
10          uranium conversion, or nuclear fuel fabrication facil-  
11          ity subject to licensing or certification under this Act  
12          during construction of the facility, if the destruction  
13          or damage caused or attempted to be caused could ad-  
14          versely affect public health and safety during the op-  
15          eration of the facility;

16          “(6) any primary facility or backup facility  
17          from which a radiological emergency preparedness  
18          alert and warning system is activated; or

19          “(7) any radioactive material or other property  
20          subject to regulation by the Nuclear Regulatory Com-  
21          mission that, before the date of the offense, the Nuclear  
22          Regulatory Commission determines, by order or regu-  
23          lation published in the Federal Register, is of signifi-  
24          cance to the public health and safety or to common  
25          defense and security,”.

1       (b) *PENALTIES.*—Section 236 of the Atomic Energy  
2 Act of 1954 (42 U.S.C. 2284) is amended by striking  
3 “\$10,000 or imprisoned for not more than 20 years, or both,  
4 and, if death results to any person, shall be imprisoned for  
5 any term of years or for life” both places it appears and  
6 inserting “\$1,000,000 or imprisoned for up to life without  
7 parole”.

8 **§ 666. Secure transfer of nuclear materials**

9       (a) *AMENDMENT.*—Chapter 14 of the Atomic Energy  
10 Act of 1954 (42 U.S.C. 2201–2210b) is amended by adding  
11 at the end the following new section:

12 **“SEC. 170C. SECURE TRANSFER OF NUCLEAR MATERIALS.**

13       “a. The Nuclear Regulatory Commission shall establish  
14 a system to ensure that materials described in subsection  
15 b., when transferred or received in the United States by any  
16 party pursuant to an import or export license issued pursu-  
17 ant to this Act, are accompanied by a manifest describing  
18 the type and amount of materials being transferred or re-  
19 ceived. Each individual receiving or accompanying the  
20 transfer of such materials shall be subject to a security back-  
21 ground check conducted by appropriate Federal entities.

22       “b. Except as otherwise provided by the Commission  
23 by regulation, the materials referred to in subsection a. are  
24 byproduct materials, source materials, special nuclear ma-  
25 terials, high-level radioactive waste, spent nuclear fuel,

1 *transuranic waste, and low-level radioactive waste (as de-*  
2 *fin ed in section 2(16) of the Nuclear Waste Policy Act of*  
3 *1982 (42 U.S.C. 10101(16))).”.*

4       **(b) REGULATIONS.**—*Not later than 1 year after the*  
5 *date of the enactment of this Act, and from time to time*  
6 *thereafter as it considers necessary, the Nuclear Regulatory*  
7 *Commission shall issue regulations identifying radioactive*  
8 *materials or classes of individuals that, consistent with the*  
9 *protection of public health and safety and the common de-*  
10 *fense and security, are appropriate exceptions to the re-*  
11 *quirements of section 170C of the Atomic Energy Act of*  
12 *1954, as added by subsection (a) of this section.*

13       **(c) EFFECTIVE DATE.**—*The amendment made by sub-*  
14 *section (a) shall take effect upon the issuance of regulations*  
15 *under subsection (b), except that the background check re-*  
16 *quirement shall become effective on a date established by*  
17 *the Commission.*

18       **(d) EFFECT ON OTHER LAW.**—*Nothing in this section*  
19 *or the amendment made by this section shall waive, modify,*  
20 *or affect the application of chapter 51 of title 49, United*  
21 *States Code, part A of subtitle V of title 49, United States*  
22 *Code, part B of subtitle VI of title 49, United States Code,*  
23 *and title 23, United States Code.*

1       (e) *TABLE OF SECTIONS AMENDMENT.*—*The table of*  
 2 *sections for chapter 14 of the Atomic Energy Act of 1954*  
 3 *is amended by adding at the end the following new item:*

“Sec. 170C. *Secure transfer of nuclear materials.*”.

4 **§ 667. Department of Homeland Security consultation**

5       *Before issuing a license for a utilization facility, the*  
 6 *Nuclear Regulatory Commission shall consult with the De-*  
 7 *partment of Homeland Security concerning the potential*  
 8 *vulnerabilities of the location of the proposed facility to ter-*  
 9 *rorist attack.*

10 **§ 668. Authorization of appropriations**

11       (a) *IN GENERAL.*—*There are authorized to be appro-*  
 12 *priated such sums as are necessary to carry out this subtitle*  
 13 *and the amendments made by this subtitle.*

14       (b) *NUCLEAR REGULATORY COMMISSION USER FEES*  
 15 *AND ANNUAL CHARGES.*—*Section 6101 of the Omnibus*  
 16 *Budget Reconciliation Act of 1990 (42 U.S.C. 2214) is*  
 17 *amended—*

18               (1) *in subsection (a)—*

19                       (A) *by striking “Except as provided in*  
 20 *paragraph (3), the” and inserting “The” in*  
 21 *paragraph (1); and*

22                       (B) *by striking paragraph (3); and*

23               (2) *in subsection (c)—*

24                       (A) *by striking “and” at the end of para-*  
 25 *graph (2)(A)(i);*

1           (B) by striking the period at the end of  
2 paragraph (2)(A)(ii) and inserting a semicolon;

3           (C) by adding at the end of paragraph  
4 (2)(A) the following new clauses:

5                 “(iii) amounts appropriated to the  
6 Commission for the fiscal year for imple-  
7 mentation of section 3116 of the Ronald W.  
8 Reagan National Defense Authorization Act  
9 for Fiscal Year 2005; and

10                “(iv) amounts appropriated to the  
11 Commission for homeland security activities  
12 of the Commission for the fiscal year, except  
13 for the costs of fingerprinting and back-  
14 ground checks required by section 149 of the  
15 Atomic Energy Act of 1954 (42 U.S.C.  
16 2169) and the costs of conducting security  
17 inspections.”; and

18           (D) by amending paragraph (2)(B)(v) to  
19 read as follows:

20                 “(v) 90 percent for fiscal year 2005  
21 and each fiscal year thereafter.”.

22           (c) *REPEAL*.—Section 7601 of the Consolidated Omni-  
23 bus Budget Reconciliation Act of 1985 (42 U.S.C. 2213)  
24 is repealed.

# **TITLE VII—VEHICLES AND FUELS**

## ***Subtitle A—Existing Programs***

### **§ 701. Use of alternative fuels by dual-fueled vehicles**

*Section 400AA(a)(3)(E) of the Energy Policy and Conservation Act (42 U.S.C. 6374(a)(3)(E)) is amended to read as follows:*

*“(E)(i) Dual fueled vehicles acquired pursuant to this section shall be operated on alternative fuels unless the Secretary determines that an agency qualifies for a waiver of such requirement for vehicles operated by the agency in a particular geographic area in which—*

*“(I) the alternative fuel otherwise required to be used in the vehicle is not reasonably available to retail purchasers of the fuel, as certified to the Secretary by the head of the agency; or*

*“(II) the cost of the alternative fuel otherwise required to be used in the vehicle is unreasonably more expensive compared to gasoline, as certified to the Secretary by the head of the agency.*

*“(ii) The Secretary shall monitor compliance with this subparagraph by all such fleets and shall report annually to Congress on the extent to which the requirements of this subparagraph are being achieved. The report shall include information on annual reductions achieved from the use of*

1 *petroleum-based fuels and the problems, if any, encountered*  
 2 *in acquiring alternative fuels.”.*

3 **§ 704. Incremental cost allocation**

4 *Section 303(c) of the Energy Policy Act of 1992 (42*  
 5 *U.S.C. 13212(c)) is amended by striking “may” and insert-*  
 6 *ing “shall”.*

7 **§ 705. Lease condensates**

8 *(a) LEASE CONDENSATE FUELS.—Section 301 of the*  
 9 *Energy Policy Act of 1992 (42 U.S.C. 13211) is amended—*

10 *(1) in paragraph (2), by inserting “mixtures*  
 11 *containing 50 percent or more by volume of lease con-*  
 12 *densate or fuels extracted from lease condensate;”*  
 13 *after “liquefied petroleum gas;”;*

14 *(2) in paragraph (13), by striking “and” at the*  
 15 *end;*

16 *(3) in paragraph (14)—*

17 *(A) by inserting “mixtures containing 50*  
 18 *percent or more by volume of lease condensate or*  
 19 *fuels extracted from lease condensate,” after “liq-*  
 20 *uefied petroleum gas;”;* and

21 *(B) by striking the period and inserting “;*  
 22 *and”;*

23 *(4) by adding at the end the following:*

24 *“(15) the term ‘lease condensate’ means a mix-*  
 25 *ture, primarily of pentanes and heavier hydrocarbons,*



1       *that is recovered as a liquid from natural gas in lease*  
 2       *separation facilities.”.*

3       ***(b) LEASE CONDENSATE USE CREDITS.—***

4               ***(1) IN GENERAL.—****Title III of the Energy Policy*  
 5       *Act of 1992 (42 U.S.C. 13211 et seq.) is amended by*  
 6       *adding at the end the following:*

7       **“SEC. 313. LEASE CONDENSATE USE CREDITS.**

8               ***“(a) IN GENERAL.—****Subject to subsection (d), the Sec-*  
 9       *retary shall allocate 1 credit under this section to a fleet*  
 10       *or covered person for each qualifying volume of the lease*  
 11       *condensate component of fuel containing at least 50 percent*  
 12       *lease condensate, or fuels extracted from lease condensate,*  
 13       *after the date of enactment of this section for use by the*  
 14       *fleet or covered person in vehicles owned or operated by the*  
 15       *fleet or covered person that weigh more than 8,500 pounds*  
 16       *gross vehicle weight rating.*

17               ***“(b) REQUIREMENTS.—****A credit allocated under this*  
 18       *section—*

19               ***“(1) shall be subject to the same exceptions, au-***  
 20       *thority, documentation, and use of credits that are*  
 21       *specified for qualifying volumes of biodiesel in section*  
 22       *312; and*

23               ***“(2) shall not be considered a credit under sec-***  
 24       *tion 508.*

25               ***“(c) REGULATION.—***

1           “(1) *IN GENERAL.*—Subject to subsection (d), not  
 2           *later than January 1, 2006, after the collection of ap-*  
 3           *propriate information and data that consider usage*  
 4           *options, uses in other industries, products, or proc-*  
 5           *esses, potential volume capacities, costs, air emissions,*  
 6           *and fuel efficiencies, the Secretary shall issue a regu-*  
 7           *lation establishing requirements and procedures for*  
 8           *the implementation of this section.*

9           “(2) *QUALIFYING VOLUME.*—The regulation shall  
 10          *include a determination of an appropriate qualifying*  
 11          *volume for lease condensate, except that in no case*  
 12          *shall the Secretary determine that the qualifying vol-*  
 13          *ume for lease condensate is less than 1,125 gallons.*

14          “(d) *APPLICABILITY.*—This section applies unless the  
 15          *Secretary finds that the use of lease condensate as an alter-*  
 16          *native fuel would adversely affect public health or safety*  
 17          *or ambient air quality or the environment.”.*

18          “(2) *TABLE OF CONTENTS AMENDMENT.*—The  
 19          *table of contents of the Energy Policy Act of 1992 (42*  
 20          *U.S.C. prec. 13201) is amended by adding at the end*  
 21          *of the items relating to title III the following:*

          “Sec. 313. *Lease condensate use credits.*”.

22          “(c) *EMERGENCY EXEMPTION.*—Section 301 of the *En-*  
 23          *ergy Policy Act of 1992 (42 U.S.C. 13211) is amended in*  
 24          *paragraph (9)(E) by inserting before the semicolon at the*  
 25          *end “, including vehicles directly used in the emergency re-*

1 *pair of transmission lines and in the restoration of elec-*  
2 *tricity service following power outages, as determined by*  
3 *the Secretary”.*

4 **§ 706. Review of Energy Policy Act of 1992 programs**

5 *(a) IN GENERAL.—Not later than 180 days after the*  
6 *date of enactment of this section, the Secretary of Energy*  
7 *shall complete a study to determine the effect that titles III,*  
8 *IV, and V of the Energy Policy Act of 1992 (42 U.S.C.*  
9 *13211 et seq.) have had on—*

10 *(1) the development of alternative fueled vehicle*  
11 *technology;*

12 *(2) the availability of that technology in the*  
13 *market; and*

14 *(3) the cost of alternative fueled vehicles.*

15 *(b) TOPICS.—As part of the study under subsection*  
16 *(a), the Secretary shall specifically identify—*

17 *(1) the number of alternative fueled vehicles ac-*  
18 *quired by fleets or covered persons required to acquire*  
19 *alternative fueled vehicles;*

20 *(2) the quantity, by type, of alternative fuel ac-*  
21 *tually used in alternative fueled vehicles acquired by*  
22 *fleets or covered persons;*

23 *(3) the quantity of petroleum displaced by the*  
24 *use of alternative fuels in alternative fueled vehicles*  
25 *acquired by fleets or covered persons;*

1           (4) *the direct and indirect costs of compliance*  
2           *with requirements under titles III, IV, and V of the*  
3           *Energy Policy Act of 1992 (42 U.S.C. 13211 et seq.),*  
4           *including—*

5                   (A) *vehicle acquisition requirements im-*  
6                   *posed on fleets or covered persons;*

7                   (B) *administrative and recordkeeping ex-*  
8                   *penses;*

9                   (C) *fuel and fuel infrastructure costs;*

10                  (D) *associated training and employee ex-*  
11                  *penses; and*

12                  (E) *any other factors or expenses the Sec-*  
13                  *retary determines to be necessary to compile reli-*  
14                  *able estimates of the overall costs and benefits of*  
15                  *complying with programs under those titles for*  
16                  *fleets, covered persons, and the national economy;*

17           (5) *the existence of obstacles preventing compli-*  
18           *ance with vehicle acquisition requirements and in-*  
19           *creased use of alternative fuel in alternative fueled ve-*  
20           *hicles acquired by fleets or covered persons; and*

21           (6) *the projected impact of amendments to the*  
22           *Energy Policy Act of 1992 made by this title.*

23           (c) *REPORT.—Upon completion of the study under this*  
24           *section, the Secretary shall submit to Congress a report that*  
25           *describes the results of the study and includes any rec-*

1 *ommendations of the Secretary for legislative or adminis-*  
 2 *trative changes concerning the alternative fueled vehicle re-*  
 3 *quirements under titles III, IV and V of the Energy Policy*  
 4 *Act of 1992 (42 U.S.C. 13211 et seq.).*

5 **§ 707. Report concerning compliance with alternative**  
 6 ***fueled vehicle purchasing requirements***

7 *Section 310(b)(1) of the Energy Policy Act of 1992 (42*  
 8 *U.S.C. 13218(b)(1)) is amended by striking “1 year after*  
 9 *the date of enactment of this subsection” and inserting*  
 10 *“February 15, 2006”.*

11 ***Subtitle B—Hybrid Vehicles, Advanced Vehicles, and***  
 12 ***Fuel Cell Buses***

13 ***PART 1—HYBRID VEHICLES***

14 **§ 711. Hybrid vehicles**

15 *The Secretary of Energy shall accelerate efforts di-*  
 16 *rected toward the improvement of batteries and other re-*  
 17 *chargeable energy storage systems, power electronics, hybrid*  
 18 *systems integration, and other technologies for use in hybrid*  
 19 *vehicles.*

20 **§ 712. Hybrid retrofit and electric conversion program**

21 *(a) ESTABLISHMENT.—The Administrator of the En-*  
 22 *vironmental Protection Agency, in consultation with the*  
 23 *Secretary, shall establish a program for awarding grants*  
 24 *on a competitive basis to entities for the installation of hy-*

1 *brid retrofit and electric conversion technologies for combus-*  
2 *tion engine vehicles.*

3 (b) *ELIGIBLE RECIPIENTS.*—*A grant shall be awarded*  
4 *under this section only—*

5 (1) *to a local or State governmental entity;*

6 (2) *to a for-profit or nonprofit corporation or*  
7 *other person; or*

8 (3) *to 1 or more contracting entities that service*  
9 *combustion engine vehicles for an entity described in*  
10 *paragraph (1) or (2).*

11 (c) *AWARDS.*—

12 (1) *IN GENERAL.*—*The Administrator shall seek,*  
13 *to the maximum extent practicable, to ensure a broad*  
14 *geographic distribution of grants under this section.*

15 (2) *PREFERENCES.*—*In making awards of*  
16 *grants under this section, the Administrator shall give*  
17 *preference to proposals that—*

18 (A) *will achieve the greatest reductions in*  
19 *emissions per proposal or per vehicle; or*

20 (B) *involve the use of emissions control ret-*  
21 *rofit or conversion technology.*

22 (d) *CONDITIONS OF GRANT.*—*A grant shall be pro-*  
23 *vided under this section on the conditions that—*

1           (1) *combustion engine vehicles on which hybrid*  
2           *retrofit or conversion technology are to be dem-*  
3           *onstrated—*

4                   (A) *with the retrofit or conversion tech-*  
5                   *nology applied will achieve low-emission stand-*  
6                   *ards consistent with the Voluntary National Low*  
7                   *Emission Vehicle Program for Light-Duty Vehi-*  
8                   *cles and Light-Duty Trucks (40 CFR Part 86)*  
9                   *without model year restrictions; and*

10                   (B) *will be used for a minimum of 3 years;*

11           (2) *grant funds will be used for the purchase of*  
12           *hybrid retrofit or conversion technology, including*  
13           *State taxes and contract fees; and*

14           (3) *grant recipients will provide at least 15 per-*  
15           *cent of the total cost of the retrofit or conversion, in-*  
16           *cluding the purchase of hybrid retrofit or conversion*  
17           *technology and all necessary labor for installation of*  
18           *the retrofit or conversion.*

19           (e) *VERIFICATION.—Not later than 90 days after the*  
20           *date of enactment of this Act, the Administrator shall pub-*  
21           *lish in the Federal Register procedures to verify—*

22                   (1) *the hybrid retrofit or conversion technology*  
23                   *to be demonstrated; and*

24                   (2) *that grants are administered in accordance*  
25                   *with this section.*

1       (f) *AUTHORIZATION OF APPROPRIATIONS.*—*There are*  
 2 *authorized to be appropriated to the Administrator to carry*  
 3 *out this section, to remain available until expended—*

4               (1) *\$20,000,000 for fiscal year 2005;*

5               (2) *\$35,000,000 for fiscal year 2006;*

6               (3) *\$45,000,000 for fiscal year 2007; and*

7               (4) *such sums as are necessary for each of fiscal*  
 8 *years 2008 and 2009.*

9               ***PART 2—ADVANCED VEHICLES***

10       ***§ 721. Definitions***

11       *In this part:*

12               (1) *ALTERNATIVE FUELED VEHICLE.*—

13                       (A) *IN GENERAL.*—*The term “alternative*  
 14 *fueled vehicle” means a vehicle propelled solely*  
 15 *on an alternative fuel (as defined in section 301*  
 16 *of the Energy Policy Act of 1992 (42 U.S.C.*  
 17 *13211)).*

18                       (B) *EXCLUSION.*—*The term “alternative*  
 19 *fueled vehicle” does not include a vehicle that the*  
 20 *Secretary determines, by regulation, does not*  
 21 *yield substantial environmental benefits over a*  
 22 *vehicle operating solely on gasoline or diesel de-*  
 23 *rived from fossil fuels.*

24               (2) *FUEL CELL VEHICLE.*—*The term “fuel cell*  
 25 *vehicle” means a vehicle propelled by an electric*



1     *motor powered by a fuel cell system that converts*  
2     *chemical energy into electricity by combining oxygen*  
3     *(from air) with hydrogen fuel that is stored on the ve-*  
4     *hicle or is produced onboard by reformation of a hy-*  
5     *drocarbon fuel. Such fuel cell system may or may not*  
6     *include the use of auxiliary energy storage systems to*  
7     *enhance vehicle performance.*

8             (3) *HYBRID VEHICLE.*—*The term “hybrid vehi-*  
9     *cle” means a medium or heavy duty vehicle propelled*  
10    *by an internal combustion engine or heat engine*  
11    *using any combustible fuel and an onboard recharge-*  
12    *able energy storage device.*

13            (4) *NEIGHBORHOOD ELECTRIC VEHICLE.*—*The*  
14    *term “neighborhood electric vehicle” means a motor*  
15    *vehicle that—*

16                    (A) *meets the definition of a low-speed vehi-*  
17                    *cle (as defined in part 571 of title 49, Code of*  
18                    *Federal Regulations);*

19                    (B) *meets the definition of a zero-emission*  
20                    *vehicle (as defined in section 86.1702–99 of title*  
21                    *40, Code of Federal Regulations);*

22                    (C) *meets the requirements of Federal Motor*  
23                    *Vehicle Safety Standard No. 500; and*

24                    (D) *has a maximum speed of not greater*  
25                    *than 25 miles per hour.*

1           (5) *PILOT PROGRAM*.—The term “pilot program”  
2           means the competitive grant program established  
3           under section 722.

4           (6) *SECRETARY*.—The term “Secretary” means  
5           the Secretary of Energy.

6           (7) *ULTRA-LOW SULFUR DIESEL VEHICLE*.—The  
7           term “ultra-low sulfur diesel vehicle” means a vehicle  
8           manufactured in any of model years 2004 through  
9           2006 powered by a heavy-duty diesel engine that—

10           (A) is fueled by diesel fuel that contains sul-  
11           fur at not more than 15 parts per million; and

12           (B) emits not more than the lesser of—

13           (i) for vehicles manufactured in model  
14           years 2004 through 2006, 2.5 grams per  
15           brake horsepower-hour of nonmethane hy-  
16           drocarbons and oxides of nitrogen and .01  
17           grams per brake horsepower-hour of partic-  
18           ulate matter; or

19           (ii) the quantity of emissions of non-  
20           methane hydrocarbons, oxides of nitrogen,  
21           and particulate matter of the best-per-  
22           forming technology of ultra-low sulfur diesel  
23           vehicles of the same class and application  
24           that are commercially available.

1 **§ 722. Pilot program**

2       (a) *ESTABLISHMENT.*—*The Secretary, in consultation*  
3 *with the Secretary of Transportation, shall establish a com-*  
4 *petitive grant pilot program, to be administered through*  
5 *the Clean Cities Program of the Department of Energy, to*  
6 *provide not more than 15 geographically dispersed project*  
7 *grants to State governments, local governments, or metro-*  
8 *politan transportation authorities to carry out a project or*  
9 *projects for the purposes described in subsection (b).*

10       (b) *GRANT PURPOSES.*—*A grant under this section*  
11 *may be used for the following purposes:*

12               (1) *The acquisition of alternative fueled vehicles*  
13 *or fuel cell vehicles, including—*

14                       (A) *passenger vehicles (including neighbor-*  
15 *hood electric vehicles); and*

16                       (B) *motorized 2-wheel bicycles, scooters, or*  
17 *other vehicles for use by law enforcement per-*  
18 *sonnel or other State or local government or met-*  
19 *ropolitan transportation authority employees.*

20               (2) *The acquisition of alternative fueled vehicles,*  
21 *hybrid vehicles, or fuel cell vehicles, including—*

22                       (A) *buses used for public transportation or*  
23 *transportation to and from schools;*

24                       (B) *delivery vehicles for goods or services;*  
25 *and*

1           (C) ground support vehicles at public air-  
2           ports (including vehicles to carry baggage or  
3           push or pull airplanes toward or away from ter-  
4           minal gates).

5           (3) The acquisition of ultra-low sulfur diesel ve-  
6           hicles.

7           (4) Installation or acquisition of infrastructure  
8           necessary to directly support an alternative fueled ve-  
9           hicle, fuel cell vehicle, or hybrid vehicle project funded  
10          by the grant, including fueling and other support  
11          equipment.

12          (5) Operation and maintenance of vehicles, in-  
13          frastructure, and equipment acquired as part of a  
14          project funded by the grant.

15          (c) APPLICATIONS.—

16               (1) REQUIREMENTS.—

17                   (A) IN GENERAL.—The Secretary shall issue  
18                   requirements for applying for grants under the  
19                   pilot program.

20                   (B) MINIMUM REQUIREMENTS.—At a min-  
21                   imum, the Secretary shall require that an appli-  
22                   cation for a grant—

23                           (i) be submitted by the head of a State  
24                           or local government or a metropolitan  
25                           transportation authority, or any combina-

1            *tion thereof, and a registered participant in*  
2            *the Clean Cities Program of the Department*  
3            *of Energy; and*

4            *(ii) include—*

5                    *(I) a description of the project*  
6                    *proposed in the application, including*  
7                    *how the project meets the requirements*  
8                    *of this part;*

9                    *(II) an estimate of the ridership*  
10                   *or degree of use of the project;*

11                   *(III) an estimate of the air pollu-*  
12                   *tion emissions reduced and fossil fuel*  
13                   *displaced as a result of the project, and*  
14                   *a plan to collect and disseminate envi-*  
15                   *ronmental data, related to the project*  
16                   *to be funded under the grant, over the*  
17                   *life of the project;*

18                   *(IV) a description of how the*  
19                   *project will be sustainable without Fed-*  
20                   *eral assistance after the completion of*  
21                   *the term of the grant;*

22                   *(V) a complete description of the*  
23                   *costs of the project, including acquisi-*  
24                   *tion, construction, operation, and*

1                   *maintenance costs over the expected life*  
2                   *of the project;*

3                   (VI) *a description of which costs*  
4                   *of the project will be supported by Fed-*  
5                   *eral assistance under this part; and*

6                   (VII) *documentation to the satis-*  
7                   *faction of the Secretary that diesel fuel*  
8                   *containing sulfur at not more than 15*  
9                   *parts per million is available for car-*  
10                  *rying out the project, and a commit-*  
11                  *ment by the applicant to use such fuel*  
12                  *in carrying out the project.*

13               (2) *PARTNERS.—An applicant under paragraph*  
14               (1) *may carry out a project under the pilot program*  
15               *in partnership with public and private entities.*

16               (d) *SELECTION CRITERIA.—In evaluating applica-*  
17               *tions under the pilot program, the Secretary shall—*

18                   (1) *consider each applicant's previous experience*  
19                   *with similar projects; and*

20                   (2) *give priority consideration to applications*  
21                   *that—*

22                           (A) *are most likely to maximize protection*  
23                           *of the environment;*

24                           (B) *demonstrate the greatest commitment*  
25                           *on the part of the applicant to ensure funding*

1       *for the proposed project and the greatest likeli-*  
2       *hood that the project will be maintained or ex-*  
3       *panded after Federal assistance under this part*  
4       *is completed; and*

5               *(C) exceed the minimum requirements of*  
6       *subsection (c)(1)(B)(ii).*

7       *(e) PILOT PROJECT REQUIREMENTS.—*

8               *(1) MAXIMUM AMOUNT.—The Secretary shall not*  
9       *provide more than \$20,000,000 in Federal assistance*  
10       *under the pilot program to any applicant.*

11               *(2) COST SHARING.—The Secretary shall not*  
12       *provide more than 50 percent of the cost, incurred*  
13       *during the period of the grant, of any project under*  
14       *the pilot program.*

15               *(3) MAXIMUM PERIOD OF GRANTS.—The Sec-*  
16       *retary shall not fund any applicant under the pilot*  
17       *program for more than 5 years.*

18               *(4) DEPLOYMENT AND DISTRIBUTION.—The Sec-*  
19       *retary shall seek to the maximum extent practicable*  
20       *to ensure a broad geographic distribution of project*  
21       *sites.*

22               *(5) TRANSFER OF INFORMATION AND KNOWL-*  
23       *EDGE.—The Secretary shall establish mechanisms to*  
24       *ensure that the information and knowledge gained by*  
25       *participants in the pilot program are transferred*

1       among the pilot program participants and to other  
2       interested parties, including other applicants that  
3       submitted applications.

4       (f) *SCHEDULE*.—

5           (1) *PUBLICATION*.—Not later than 90 days after  
6       the date of enactment of this Act, the Secretary shall  
7       publish in the *Federal Register*, *Commerce Business*  
8       *Daily*, and elsewhere as appropriate, a request for ap-  
9       plications to undertake projects under the pilot pro-  
10      gram. Applications shall be due not later than 180  
11      days after the date of publication of the notice.

12          (2) *SELECTION*.—Not later than 180 days after  
13      the date by which applications for grants are due, the  
14      Secretary shall select by competitive, peer reviewed  
15      proposal, all applications for projects to be awarded  
16      a grant under the pilot program.

17          (g) *LIMIT ON FUNDING*.—The Secretary shall provide  
18      not less than 20 nor more than 25 percent of the grant fund-  
19      ing made available under this section for the acquisition  
20      of ultra-low sulfur diesel vehicles.

21      **§ 723. Reports to Congress**

22          (a) *INITIAL REPORT*.—Not later than 60 days after the  
23      date on which grants are awarded under this part, the Sec-  
24      retary shall submit to Congress a report containing—



1           (1) *an identification of the grant recipients and*  
2           *a description of the projects to be funded;*

3           (2) *an identification of other applicants that*  
4           *submitted applications for the pilot program; and*

5           (3) *a description of the mechanisms used by the*  
6           *Secretary to ensure that the information and knowl-*  
7           *edge gained by participants in the pilot program are*  
8           *transferred among the pilot program participants*  
9           *and to other interested parties, including other appli-*  
10          *cants that submitted applications.*

11          (b) *EVALUATION.*—*Not later than 3 years after the*  
12          *date of enactment of this Act, and annually thereafter until*  
13          *the pilot program ends, the Secretary shall submit to Con-*  
14          *gress a report containing an evaluation of the effectiveness*  
15          *of the pilot program, including—*

16               (1) *an assessment of the benefits to the environ-*  
17               *ment derived from the projects included in the pilot*  
18               *program; and*

19               (2) *an estimate of the potential benefits to the*  
20               *environment to be derived from widespread applica-*  
21               *tion of alternative fueled vehicles and ultra-low sulfur*  
22               *diesel vehicles.*

1 **§ 724. Authorization of appropriations**

2 *There are authorized to be appropriated to the Sec-*  
 3 *retary to carry out this part \$200,000,000, to remain avail-*  
 4 *able until expended.*

5 **PART 3—FUEL CELL BUSES**

6 **§ 731. Fuel cell transit bus demonstration**

7 (a) *IN GENERAL.*—*The Secretary of Energy, in con-*  
 8 *sultation with the Secretary of Transportation, shall estab-*  
 9 *lish a transit bus demonstration program to make competi-*  
 10 *tive, merit-based awards for 5-year projects to demonstrate*  
 11 *not more than 25 fuel cell transit buses (and necessary in-*  
 12 *frastructure) in 5 geographically dispersed localities.*

13 (b) *PREFERENCE.*—*In selecting projects under this sec-*  
 14 *tion, the Secretary of Energy shall give preference to*  
 15 *projects that are most likely to mitigate congestion and im-*  
 16 *prove air quality.*

17 (c) *AUTHORIZATION OF APPROPRIATIONS.*—*There are*  
 18 *authorized to be appropriated to the Secretary of Energy*  
 19 *to carry out this section \$10,000,000 for each of fiscal years*  
 20 *2006 through 2010.*

21 **Subtitle C—Clean School Buses**

22 **§ 741. Definitions**

23 *In this subtitle:*

24 (1) *ADMINISTRATOR.*—*The term “Adminis-*  
 25 *trator” means the Administrator of the Environ-*  
 26 *mental Protection Agency.*

1           (2) *ALTERNATIVE FUEL.*—The term “alternative  
2       *fuel*” means liquefied natural gas, compressed natural  
3       *gas, liquefied petroleum gas, hydrogen, propane, or*  
4       *methanol or ethanol at no less than 85 percent by vol-*  
5       *ume.*

6           (3) *ALTERNATIVE FUEL SCHOOL BUS.*—The term  
7       “alternative fuel school bus” means a school bus that  
8       meets all of the requirements of this subtitle and is  
9       operated solely on an alternative fuel.

10          (4) *EMISSIONS CONTROL RETROFIT TECH-*  
11       *NOLOGY.*—The term “emissions control retrofit tech-

12       *nology*” means a particulate filter or other emissions  
13       control equipment that is verified or certified by the  
14       Administrator or the California Air Resources Board  
15       as an effective emission reduction technology when in-  
16       stalled on an existing school bus.

17          (5) *IDLING.*—The term “idling” means operating  
18       an engine while remaining stationary for more than  
19       approximately 15 minutes, except that the term does  
20       not apply to routine stoppages associated with traffic  
21       movement or congestion.

22          (6) *SECRETARY.*—The term “Secretary” means  
23       the Secretary of Energy.

24          (7) *ULTRA-LOW SULFUR DIESEL FUEL.*—The  
25       term “ultra-low sulfur diesel fuel” means diesel fuel

1       *that contains sulfur at not more than 15 parts per*  
 2       *million.*

3               (8) *ULTRA-LOW SULFUR DIESEL FUEL SCHOOL*  
 4       *BUS.—The term “ultra-low sulfur diesel fuel school*  
 5       *bus” means a school bus that meets all of the require-*  
 6       *ments of this subtitle and is operated solely on ultra-*  
 7       *low sulfur diesel fuel.*

8       **§ 742. Program for replacement of certain school**  
 9               **buses with clean school buses**

10       (a) *ESTABLISHMENT.—The Administrator, in con-*  
 11       *sultation with the Secretary and other appropriate Federal*  
 12       *departments and agencies, shall establish a program for*  
 13       *awarding grants on a competitive basis to eligible entities*  
 14       *for the replacement of existing school buses manufactured*  
 15       *before model year 1991 with alternative fuel school buses*  
 16       *and ultra-low sulfur diesel fuel school buses.*

17       (b) *REQUIREMENTS.—*

18               (1) *IN GENERAL.—Not later than 90 days after*  
 19       *the date of enactment of this Act, the Administrator*  
 20       *shall establish and publish in the Federal Register*  
 21       *grant requirements on eligibility for assistance, and*  
 22       *on implementation of the program established under*  
 23       *subsection (a), including instructions for the submis-*  
 24       *sion of grant applications and certification require-*  
 25       *ments to ensure compliance with this subtitle.*

1           (2) *APPLICATION DEADLINES.*—*The requirements*  
2           *established under paragraph (1) shall require submis-*  
3           *sion of grant applications not later than—*

4                   (A) *in the case of the first year of program*  
5                   *implementation, the date that is 180 days after*  
6                   *the publication of the requirements in the Fed-*  
7                   *eral Register; and*

8                   (B) *in the case of each subsequent year,*  
9                   *June 1 of the year.*

10          (c) *ELIGIBLE RECIPIENTS.*—*A grant shall be awarded*  
11          *under this section only—*

12                   (1) *to 1 or more local or State governmental en-*  
13                   *tities responsible for providing school bus service to 1*  
14                   *or more public school systems or responsible for the*  
15                   *purchase of school buses;*

16                   (2) *to 1 or more contracting entities that provide*  
17                   *school bus service to 1 or more public school systems,*  
18                   *if the grant application is submitted jointly with the*  
19                   *1 or more school systems to be served by the buses, ex-*  
20                   *cept that the application may provide that buses pur-*  
21                   *chased using funds awarded shall be owned, operated,*  
22                   *and maintained exclusively by the 1 or more con-*  
23                   *tracting entities; or*

24                   (3) *to a nonprofit school transportation associa-*  
25                   *tion representing private contracting entities, if the*

1        *association has notified and received approval from*  
2        *the 1 or more school systems to be served by the buses.*

3        *(d) AWARD DEADLINES.—*

4                *(1) IN GENERAL.—Subject to paragraph (2), the*  
5        *Administrator shall award a grant made to a quali-*  
6        *fied applicant for a fiscal year—*

7                *(A) in the case of the first fiscal year of pro-*  
8        *gram implementation, not later than the date*  
9        *that is 90 days after the application deadline es-*  
10       *tablished under subsection (b)(2); and*

11               *(B) in the case of each subsequent fiscal*  
12       *year, not later than August 1 of the fiscal year.*

13        *(2) INSUFFICIENT NUMBER OF QUALIFIED GRANT*  
14       *APPLICATIONS.—If the Administrator does not receive*  
15       *a sufficient number of qualified grant applications to*  
16       *meet the requirements of subsection (i)(1) for a fiscal*  
17       *year, the Administrator shall award a grant made to*  
18       *a qualified applicant under subsection (i)(2) not later*  
19       *than September 30 of the fiscal year.*

20       *(e) TYPES OF GRANTS.—*

21               *(1) IN GENERAL.—A grant under this section*  
22       *shall be used for the replacement of school buses man-*  
23       *ufactured before model year 1991 with alternative fuel*  
24       *school buses and ultra-low sulfur diesel fuel school*  
25       *buses.*

1           (2) *NO ECONOMIC BENEFIT.*—Other than the re-  
2           ceipt of the grant, a recipient of a grant under this  
3           section may not receive any economic benefit in con-  
4           nection with the receipt of the grant.

5           (3) *PRIORITY OF GRANT APPLICATIONS.*—The  
6           Administrator shall give priority to applicants that  
7           propose to replace school buses manufactured before  
8           model year 1977.

9           (f) *CONDITIONS OF GRANT.*—A grant provided under  
10          this section shall include the following conditions:

11           (1) *SCHOOL BUS FLEET.*—All buses acquired  
12           with funds provided under the grant shall be operated  
13           as part of the school bus fleet for which the grant was  
14           made for a minimum of 5 years.

15           (2) *USE OF FUNDS.*—Funds provided under the  
16           grant may only be used—

17                   (A) to pay the cost, except as provided in  
18                   paragraph (3), of new alternative fuel school  
19                   buses or ultra-low sulfur diesel fuel school buses,  
20                   including State taxes and contract fees associ-  
21                   ated with the acquisition of such buses; and

22                   (B) to provide—

23                           (i) up to 20 percent of the price of the  
24                           alternative fuel school buses acquired, for  
25                           necessary alternative fuel infrastructure if

1           the infrastructure will only be available to  
2           the grant recipient; and

3                   (ii) up to 25 percent of the price of the  
4           alternative fuel school buses acquired, for  
5           necessary alternative fuel infrastructure if  
6           the infrastructure will be available to the  
7           grant recipient and to other bus fleets.

8           (3) *GRANT RECIPIENT FUNDS.*—The grant re-  
9           cipient shall be required to provide at least—

10                   (A) in the case of a grant recipient de-  
11           scribed in paragraph (1) or (3) of subsection (c),  
12           the lesser of—

13                           (i) an amount equal to 15 percent of  
14           the total cost of each bus received; or

15                           (ii) \$15,000 per bus; and

16                   (B) in the case of a grant recipient de-  
17           scribed in subsection (c)(2), the lesser of—

18                           (i) an amount equal to 20 percent of  
19           the total cost of each bus received; or

20                           (ii) \$20,000 per bus.

21           (4) *ULTRA-LOW SULFUR DIESEL FUEL.*—In the  
22           case of a grant recipient receiving a grant for ultra-  
23           low sulfur diesel fuel school buses, the grant recipient  
24           shall be required to provide documentation to the sat-  
25           isfaction of the Administrator that diesel fuel con-



1        *taining sulfur at not more than 15 parts per million*  
2        *is available for carrying out the purposes of the*  
3        *grant, and a commitment by the applicant to use*  
4        *such fuel in carrying out the purposes of the grant.*

5            (5) *TIMING.*—*All alternative fuel school buses,*  
6        *ultra-low sulfur diesel fuel school buses, or alternative*  
7        *fuel infrastructure acquired under a grant awarded*  
8        *under this section shall be purchased and placed in*  
9        *service as soon as practicable.*

10        (g) *BUSES.*—

11            (1) *IN GENERAL.*—*Except as provided in para-*  
12        *graph (2), funding under a grant made under this*  
13        *section for the acquisition of new alternative fuel*  
14        *school buses or ultra-low sulfur diesel fuel school buses*  
15        *shall only be used to acquire school buses—*

16            (A) *with a gross vehicle weight of greater*  
17        *than 14,000 pounds;*

18            (B) *that are powered by a heavy duty en-*  
19        *gine;*

20            (C) *in the case of alternative fuel school*  
21        *buses manufactured in model years 2004 through*  
22        *2006, that emit not more than 1.8 grams per*  
23        *brake horsepower-hour of nonmethane hydro-*  
24        *carbons and oxides of nitrogen and .01 grams*

1           *per brake horsepower-hour of particulate matter;*  
2           *and*

3           *(D) in the case of ultra-low sulfur diesel*  
4           *fuel school buses manufactured in model years*  
5           *2004 through 2006, that emit not more than 2.5*  
6           *grams per brake horsepower-hour of nonmethane*  
7           *hydrocarbons and oxides of nitrogen and .01*  
8           *grams per brake horsepower-hour of particulate*  
9           *matter.*

10          *(2) LIMITATIONS.—A bus shall not be acquired*  
11          *under this section that emits nonmethane hydro-*  
12          *carbons, oxides of nitrogen, or particulate matter at*  
13          *a rate greater than the best performing technology of*  
14          *the same class of ultra-low sulfur diesel fuel school*  
15          *buses commercially available at the time the grant is*  
16          *made.*

17          *(h) DEPLOYMENT AND DISTRIBUTION.—The Adminis-*  
18          *trator shall—*

19               *(1) seek, to the maximum extent practicable, to*  
20               *achieve nationwide deployment of alternative fuel*  
21               *school buses and ultra-low sulfur diesel fuel school*  
22               *buses through the program under this section; and*

23               *(2) ensure a broad geographic distribution of*  
24               *grant awards, with a goal of no State receiving more*

1        *than 10 percent of the grant funding made available*  
 2        *under this section for a fiscal year.*

3        *(i) ALLOCATION OF FUNDS.—*

4            *(1) IN GENERAL.—Subject to paragraph (2), of*  
 5        *the amount of grant funding made available to carry*  
 6        *out this section for any fiscal year, the Administrator*  
 7        *shall use—*

8            *(A) 70 percent for the acquisition of alter-*  
 9        *native fuel school buses or supporting infrastruc-*  
 10       *ture; and*

11           *(B) 30 percent for the acquisition of ultra-*  
 12       *low sulfur diesel fuel school buses.*

13           *(2) INSUFFICIENT NUMBER OF QUALIFIED GRANT*  
 14       *APPLICATIONS.—After the first fiscal year in which*  
 15       *this program is in effect, if the Administrator does*  
 16       *not receive a sufficient number of qualified grant ap-*  
 17       *plications to meet the requirements of subparagraph*  
 18       *(A) or (B) of paragraph (1) for a fiscal year, effective*  
 19       *beginning on August 1 of the fiscal year, the Admin-*  
 20       *istrator shall make the remaining funds available to*  
 21       *other qualified grant applicants under this section.*

22           *(j) REDUCTION OF SCHOOL BUS IDLING.—Each local*  
 23       *educational agency (as defined in section 9101 of the Ele-*  
 24       *mentary and Secondary Education Act of 1965 (20 U.S.C.*  
 25       *7801)) that receives Federal funds under the Elementary*

1 *and Secondary Education Act of 1965 (20 U.S.C. 6301 et*  
2 *seq.) is encouraged to develop a policy, consistent with the*  
3 *health, safety, and welfare of students and the proper oper-*  
4 *ation and maintenance of school buses, to reduce the inci-*  
5 *dence of unnecessary school bus idling at schools when pick-*  
6 *ing up and unloading students.*

7 *(k) ANNUAL REPORT.—*

8 *(1) IN GENERAL.—Not later than January 31 of*  
9 *each year, the Administrator shall transmit to Con-*  
10 *gress a report evaluating implementation of the pro-*  
11 *grams under this section and section 743.*

12 *(2) COMPONENTS.—The reports shall include a*  
13 *description of—*

14 *(A) the total number of grant applications*  
15 *received;*

16 *(B) the number and types of alternative fuel*  
17 *school buses, ultra-low sulfur diesel fuel school*  
18 *buses, and retrofitted buses requested in grant*  
19 *applications;*

20 *(C) grants awarded and the criteria used to*  
21 *select the grant recipients;*

22 *(D) certified engine emission levels of all*  
23 *buses purchased or retrofitted under the pro-*  
24 *grams under this section and section 743;*

1           (E) an evaluation of the in-use emission  
2           level of buses purchased or retrofitted under the  
3           programs under this section and section 743;  
4           and

5           (F) any other information the Adminis-  
6           trator considers appropriate.

7           (l) *AUTHORIZATION OF APPROPRIATIONS.*—There are  
8           authorized to be appropriated to the Administrator to carry  
9           out this section, to remain available until expended—

10           (1) \$45,000,000 for fiscal year 2005;

11           (2) \$65,000,000 for fiscal year 2006;

12           (3) \$90,000,000 for fiscal year 2007; and

13           (4) such sums as are necessary for each of fiscal  
14           years 2008 and 2009.

15   **§ 743. Diesel retrofit program**

16           (a) *ESTABLISHMENT.*—The Administrator, in con-  
17           sultation with the Secretary, shall establish a program for  
18           awarding grants on a competitive basis to entities for the  
19           installation of retrofit technologies for diesel school buses.

20           (b) *ELIGIBLE RECIPIENTS.*—A grant shall be awarded  
21           under this section only—

22           (1) to a local or State governmental entity re-  
23           sponsible for providing school bus service to 1 or more  
24           public school systems;

1           (2) *to 1 or more contracting entities that provide*  
2           *school bus service to 1 or more public school systems,*  
3           *if the grant application is submitted jointly with the*  
4           *1 or more school systems that the buses will serve, ex-*  
5           *cept that the application may provide that buses pur-*  
6           *chased using funds awarded shall be owned, operated,*  
7           *and maintained exclusively by the 1 or more con-*  
8           *tracting entities; or*

9           (3) *to a nonprofit school transportation associa-*  
10          *tion representing private contracting entities, if the*  
11          *association has notified and received approval from*  
12          *the 1 or more school systems to be served by the buses.*

13          (c) *AWARDS.—*

14               (1) *IN GENERAL.—The Administrator shall seek,*  
15               *to the maximum extent practicable, to ensure a broad*  
16               *geographic distribution of grants under this section.*

17               (2) *PREFERENCES.—In making awards of*  
18               *grants under this section, the Administrator shall give*  
19               *preference to proposals that—*

20                       (A) *will achieve the greatest reductions in*  
21                       *emissions of nonmethane hydrocarbons, oxides of*  
22                       *nitrogen, or particulate matter per proposal or*  
23                       *per bus; or*

1                   (B) involve the use of emissions control ret-  
2                   rofit technology on diesel school buses that oper-  
3                   ate solely on ultra-low sulfur diesel fuel.

4           (d) *CONDITIONS OF GRANT.*—A grant shall be pro-  
5           vided under this section on the conditions that—

6                   (1) buses on which retrofit emissions-control  
7                   technology are to be demonstrated—

8                           (A) will operate on ultra-low sulfur diesel  
9                           fuel where such fuel is reasonably available or re-  
10                           quired for sale by State or local law or regula-  
11                           tion;

12                           (B) were manufactured in model year 1991  
13                           or later; and

14                           (C) will be used for the transportation of  
15                           school children to and from school for a min-  
16                           imum of 5 years;

17                   (2) grant funds will be used for the purchase of  
18                   emission control retrofit technology, including State  
19                   taxes and contract fees; and

20                   (3) grant recipients will provide at least 15 per-  
21                   cent of the total cost of the retrofit, including the pur-  
22                   chase of emission control retrofit technology and all  
23                   necessary labor for installation of the retrofit.

1       (e) *VERIFICATION*.—Not later than 90 days after the  
2       date of enactment of this Act, the Administrator shall pub-  
3       lish in the *Federal Register* procedures to verify—

4               (1) *the retrofit emissions-control technology to be*  
5       *demonstrated;*

6               (2) *that buses powered by ultra-low sulfur diesel*  
7       *fuel on which retrofit emissions-control technology are*  
8       *to be demonstrated will operate on diesel fuel con-*  
9       *taining not more than 15 parts per million of sulfur;*  
10      *and*

11              (3) *that grants are administered in accordance*  
12      *with this section.*

13      (f) *AUTHORIZATION OF APPROPRIATIONS*.—There are  
14      authorized to be appropriated to the Administrator to carry  
15      out this section, to remain available until expended—

16              (1) *\$20,000,000 for fiscal year 2005;*

17              (2) *\$35,000,000 for fiscal year 2006;*

18              (3) *\$45,000,000 for fiscal year 2007; and*

19              (4) *such sums as are necessary for each of fiscal*  
20      *years 2008 and 2009.*

21      **§ 744. Fuel cell school buses**

22      (a) *ESTABLISHMENT*.—The Secretary shall establish a  
23      program for entering into cooperative agreements—

24              (1) *with private sector fuel cell bus developers for*  
25      *the development of fuel cell-powered school buses; and*



1           (2) subsequently, with not less than 2 units of  
2       local government using natural gas-powered school  
3       buses and such private sector fuel cell bus developers  
4       to demonstrate the use of fuel cell-powered school  
5       buses.

6       (b) *COST SHARING.*—The non-Federal contribution for  
7       activities funded under this section shall be not less than—

8           (1) 20 percent for fuel infrastructure develop-  
9       ment activities; and

10          (2) 50 percent for demonstration activities and  
11       for development activities not described in paragraph  
12       (1).

13       (c) *REPORTS TO CONGRESS.*—Not later than 3 years  
14       after the date of enactment of this Act, the Secretary shall  
15       transmit to Congress a report that—

16           (1) evaluates the process of converting natural  
17       gas infrastructure to accommodate fuel cell-powered  
18       school buses; and

19           (2) assesses the results of the development and  
20       demonstration program under this section.

21       (d) *AUTHORIZATION OF APPROPRIATIONS.*—There are  
22       authorized to be appropriated to the Secretary to carry out  
23       this section \$25,000,000 for the period of fiscal years 2005  
24       through 2007.

**Subtitle D—Miscellaneous**

**§ 751. Railroad efficiency**

(a) *ESTABLISHMENT.*—*The Secretary of Energy shall, in cooperation with the Secretary of Transportation and the Administrator of the Environmental Protection Agency, establish a cost-shared, public-private research partnership involving the Federal Government, railroad carriers, locomotive manufacturers and equipment suppliers, and the Association of American Railroads, to develop and demonstrate railroad locomotive technologies that increase fuel economy, reduce emissions, and lower costs of operation.*

(b) *AUTHORIZATION OF APPROPRIATIONS.*—*There are authorized to be appropriated to the Secretary of Energy to carry out this section—*

*(1) \$25,000,000 for fiscal year 2006;*

*(2) \$35,000,000 for fiscal year 2007; and*

*(3) \$50,000,000 for fiscal year 2008.*

**§ 752. Mobile emission reductions trading and crediting**

(a) *IN GENERAL.*—*Not later than 180 days after the date of enactment of this Act, the Administrator of the Environmental Protection Agency shall submit to Congress a report on the experience of the Administrator with the trading of mobile source emission reduction credits for use by owners and operators of stationary source emission sources*

1 *to meet emission offset requirements within a nonattain-*  
2 *ment area.*

3 *(b) CONTENTS.—The report shall describe—*

4 *(1) projects approved by the Administrator that*  
5 *include the trading of mobile source emission reduc-*  
6 *tion credits for use by stationary sources in com-*  
7 *plying with offset requirements, including a descrip-*  
8 *tion of—*

9 *(A) project and stationary sources location;*

10 *(B) volumes of emissions offset and traded;*

11 *(C) the sources of mobile emission reduction*  
12 *credits; and*

13 *(D) if available, the cost of the credits;*

14 *(2) the significant issues identified by the Ad-*  
15 *ministrator in consideration and approval of trading*  
16 *in the projects;*

17 *(3) the requirements for monitoring and assess-*  
18 *ing the air quality benefits of any approved project;*

19 *(4) the statutory authority on which the Admin-*  
20 *istrator has based approval of the projects;*

21 *(5) an evaluation of how the resolution of issues*  
22 *in approved projects could be used in other projects;*  
23 *and*

24 *(6) any other issues that the Administrator con-*  
25 *siders relevant to the trading and generation of mo-*

1        *bile source emission reduction credits for use by sta-*  
2        *tionary sources or for other purposes.*

3    **§ 753. Aviation fuel conservation and emissions**

4        *(a) IN GENERAL.—Not later than 60 days after the*  
5        *date of enactment of this Act, the Administrator of the Fed-*  
6        *eral Aviation Administration and the Administrator of the*  
7        *Environmental Protection Agency shall jointly initiate a*  
8        *study to identify—*

9                *(1) the impact of aircraft emissions on air qual-*  
10              *ity in nonattainment areas; and*

11              *(2) ways to promote fuel conservation measures*  
12              *for aviation to—*

13                      *(A) enhance fuel efficiency; and*

14                      *(B) reduce emissions.*

15        *(b) FOCUS.—The study under subsection (a) shall focus*  
16        *on how air traffic management inefficiencies, such as air-*  
17        *craft idling at airports, result in unnecessary fuel burn and*  
18        *air emissions.*

19        *(c) REPORT.—Not later than 1 year after the date of*  
20        *the initiation of the study under subsection (a), the Admin-*  
21        *istrator of the Federal Aviation Administration and the Ad-*  
22        *ministrator of the Environmental Protection Agency shall*  
23        *jointly submit to the Committee on Energy and Commerce*  
24        *and the Committee on Transportation and Infrastructure*  
25        *of the House of Representatives and the Committee on Envi-*

1 *ronment and Public Works and the Committee on Com-*  
 2 *merce, Science, and Transportation of the Senate a report*  
 3 *that—*

4 *(1) describes the results of the study; and*

5 *(2) includes any recommendations on ways in*  
 6 *which unnecessary fuel use and emissions affecting*  
 7 *air quality may be reduced—*

8 *(A) without adversely affecting safety and*  
 9 *security and increasing individual aircraft*  
 10 *noise; and*

11 *(B) while taking into account all aircraft*  
 12 *emissions and the impact of the emissions on*  
 13 *human health.*

14 **§ 754. Diesel fueled vehicles**

15 *(a) DEFINITION OF TIER 2 EMISSION STANDARDS.—*

16 *In this section, the term “tier 2 emission standards” means*  
 17 *the motor vehicle emission standards that apply to pas-*  
 18 *senger cars, light trucks, and larger passenger vehicles man-*  
 19 *ufactured after the 2003 model year, as issued on February*  
 20 *10, 2000, by the Administrator of the Environmental Pro-*  
 21 *tection Agency under sections 202 and 211 of the Clean Air*  
 22 *Act (42 U.S.C. 7521, 7545).*

23 *(b) DIESEL COMBUSTION AND AFTER-TREATMENT*  
 24 *TECHNOLOGIES.—The Secretary of Energy shall accelerate*

1 *efforts to improve diesel combustion and after-treatment*  
2 *technologies for use in diesel fueled motor vehicles.*

3 (c) *GOALS.—The Secretary shall carry out subsection*  
4 *(b) with a view toward achieving the following goals:*

5 (1) *Developing and demonstrating diesel tech-*  
6 *nologies that, not later than 2010, meet the following*  
7 *standards:*

8 (A) *Tier 2 emission standards.*

9 (B) *The heavy-duty emissions standards of*  
10 *2007 that are applicable to heavy-duty vehicles*  
11 *under regulations issued by the Administrator of*  
12 *the Environmental Protection Agency as of the*  
13 *date of enactment of this Act.*

14 (2) *Developing the next generation of low-emis-*  
15 *sion, high efficiency diesel engine technologies, includ-*  
16 *ing homogeneous charge compression ignition tech-*  
17 *nology.*

18 ***§ 757. Biodiesel engine testing program***

19 (a) *IN GENERAL.—Not later than 180 days after the*  
20 *date of enactment of this Act, the Secretary shall initiate*  
21 *a partnership with diesel engine, diesel fuel injection sys-*  
22 *tem, and diesel vehicle manufacturers and diesel and bio-*  
23 *diesel fuel providers, to include biodiesel testing in ad-*  
24 *vanced diesel engine and fuel system technology.*

1       (b) *SCOPE.*—The program shall provide for testing to  
2       determine the impact of biodiesel from different sources on  
3       current and future emission control technologies, with em-  
4       phasis on—

5               (1) *the impact of biodiesel on emissions war-*  
6       *ranty, in-use liability, and antitampering provisions;*

7               (2) *the impact of long-term use of biodiesel on*  
8       *engine operations;*

9               (3) *the options for optimizing these technologies*  
10      *for both emissions and performance when switching*  
11      *between biodiesel and diesel fuel; and*

12              (4) *the impact of using biodiesel in these fueling*  
13      *systems and engines when used as a blend with 2006*  
14      *Environmental Protection Agency-mandated diesel*  
15      *fuel containing a maximum of 15-parts-per-million*  
16      *sulfur content.*

17      (c) *REPORT.*—Not later than 2 years after the date of  
18      enactment of this Act, the Secretary shall provide an in-  
19      terim report to Congress on the findings of the program,  
20      including a comprehensive analysis of impacts from bio-  
21      diesel on engine operation for both existing and expected  
22      future diesel technologies, and recommendations for ensur-  
23      ing optimal emissions reductions and engine performance  
24      with biodiesel.

1       (d) *AUTHORIZATION OF APPROPRIATIONS.*—*There are*  
 2 *authorized to be appropriated \$5,000,000 for each of fiscal*  
 3 *years 2006 through 2010 to carry out this section.*

4       (e) *DEFINITION.*—*For purposes of this section, the*  
 5 *term “biodiesel” means a diesel fuel substitute produced*  
 6 *from nonpetroleum renewable resources that meets the reg-*  
 7 *istration requirements for fuels and fuel additives estab-*  
 8 *lished by the Environmental Protection Agency under sec-*  
 9 *tion 211 of the Clean Air Act (42 U.S.C. 7545) and that*  
 10 *meets the American Society for Testing and Materials*  
 11 *D6751–02a Standard Specification for Biodiesel Fuel*  
 12 *(B100) Blend Stock for Distillate Fuels.*

13 **§ 759. Ultra-efficient engine technology for aircraft**

14       (a) *ULTRA-EFFICIENT ENGINE TECHNOLOGY PART-*  
 15 *NERSHIP.*—*The Secretary of Energy shall enter into a coop-*  
 16 *erative agreement with the National Aeronautics and Space*  
 17 *Administration for the development of ultra-efficient engine*  
 18 *technology for aircraft.*

19       (b) *PERFORMANCE OBJECTIVE.*—*The Secretary of En-*  
 20 *ergy shall establish the following performance objectives for*  
 21 *the program set forth in subsection (a):*

22               (1) *A fuel efficiency increase of 10 percent.*

23               (2) *A reduction in the impact of landing and*  
 24 *takeoff nitrogen oxides emissions on local air quality*  
 25 *of 70 percent.*



1       (c) *AUTHORIZATION OF APPROPRIATIONS* .—*There are*  
 2 *authorized to be appropriated to the Secretary of Energy*  
 3 *for carrying out this section \$45,000,000 for each of the fis-*  
 4 *cal years 2006, 2007, 2008, 2009, and 2010.*

5                   ***Subtitle E—Automobile Efficiency***

6   ***§ 771. Authorization of appropriations for implemen-***  
 7                   ***tation and enforcement of fuel economy***  
 8                   ***standards***

9       *In addition to any other funds authorized by law,*  
 10 *there are authorized to be appropriated to the National*  
 11 *Highway Traffic Safety Administration to carry out its ob-*  
 12 *ligations with respect to average fuel economy standards*  
 13 *\$2,000,000 for each of fiscal years 2006 through 2010.*

14   ***§ 772. Revised considerations for decisions on max-***  
 15                   ***imum feasible average fuel economy***

16       *Section 32902(f) of title 49, United States Code, is*  
 17 *amended to read as follows:*

18       “(f) *CONSIDERATIONS FOR DECISIONS ON MAXIMUM*  
 19 *FEASIBLE AVERAGE FUEL ECONOMY*.—*When deciding*  
 20 *maximum feasible average fuel economy under this section,*  
 21 *the Secretary of Transportation shall consider the following*  
 22 *matters:*

23                   “(1) *Technological feasibility.*

24                   “(2) *Economic practicability.*

1           “(3) *The effect of other motor vehicle standards*  
2           *of the Government on fuel economy.*

3           “(4) *The need of the United States to conserve*  
4           *energy.*

5           “(5) *The effects of fuel economy standards on*  
6           *passenger automobiles, nonpassenger automobiles, and*  
7           *occupant safety.*

8           “(6) *The effects of compliance with average fuel*  
9           *economy standards on levels of automobile industry*  
10          *employment in the United States.”.*

11   **§ 773. *Extension of maximum fuel economy increase***  
12           ***for alternative fueled vehicles***

13          (a) *MANUFACTURING INCENTIVES.*—Section 32905 of  
14   *title 49, United States Code, is amended—*

15               (1) *in each of subsections (b) and (d), by striking*  
16               *“1993–2004” and inserting “1993–2010”;*

17               (2) *in subsection (f), by striking “2001” and in-*  
18               *serting “2007”; and*

19               (3) *in subsection (f)(1), by striking “2004” and*  
20               *inserting “2010”.*

21          (b) *MAXIMUM FUEL ECONOMY INCREASE.*—Subsection  
22   *(a)(1) of section 32906 of title 49, United States Code, is*  
23   *amended—*

1           (1) in subparagraph (A), by striking “the model  
2       years 1993–2004” and inserting “model years 1993–  
3       2010”; and

4           (2) in subparagraph (B), by striking “the model  
5       years 2005–2008” and inserting “model years 2011–  
6       2014”.

7   **§ 774. Study of feasibility and effects of reducing use**  
8           **of fuel for automobiles**

9       (a) *IN GENERAL.*—Not later than 30 days after the  
10   date of the enactment of this Act, the Administrator of the  
11   National Highway Traffic Safety Administration shall ini-  
12   tiate a study of the feasibility and effects of reducing by  
13   model year 2014, by a significant percentage, the amount  
14   of fuel consumed by automobiles.

15       (b) *SUBJECTS OF STUDY.*—The study under this sec-  
16   tion shall include—

17           (1) examination of, and recommendation of al-  
18       ternatives to, the policy under current Federal law of  
19       establishing average fuel economy standards for auto-  
20       mobiles and requiring each automobile manufacturer  
21       to comply with average fuel economy standards that  
22       apply to the automobiles it manufactures;

23           (2) examination of how automobile manufactur-  
24       ers could contribute toward achieving the reduction  
25       referred to in subsection (a);

1           (3) *examination of the potential of fuel cell tech-*  
 2           *nology in motor vehicles in order to determine the ex-*  
 3           *tent to which such technology may contribute to*  
 4           *achieving the reduction referred to in subsection (a);*  
 5           *and*

6           (4) *examination of the effects of the reduction re-*  
 7           *ferred to in subsection (a) on—*

8                     (A) *gasoline supplies;*

9                     (B) *the automobile industry, including sales*  
 10           *of automobiles manufactured in the United*  
 11           *States;*

12                    (C) *motor vehicle safety; and*

13                    (D) *air quality.*

14           (c) *REPORT.—The Administrator shall submit to Con-*  
 15           *gress a report on the findings, conclusion, and recommenda-*  
 16           *tions of the study under this section by not later than 1*  
 17           *year after the date of the enactment of this Act.*

## 18                    ***TITLE VIII—HYDROGEN***

### 19           ***§ 801. Definitions***

20           *In this title:*

21                   (1) *ADVISORY COMMITTEE.—The term “Advisory*  
 22           *Committee” means the Hydrogen Technical and Fuel*  
 23           *Cell Advisory Committee established under section*  
 24           *805.*

1           (2) *DEPARTMENT.*—*The term “Department”*  
2           *means the Department of Energy.*

3           (3) *FUEL CELL.*—*The term “fuel cell” means a*  
4           *device that directly converts the chemical energy of a*  
5           *fuel and an oxidant into electricity by an electro-*  
6           *chemical process taking place at separate electrodes in*  
7           *the device.*

8           (4) *INFRASTRUCTURE.*—*The term “infrastructure”*  
9           *means the equipment, systems, or facilities used*  
10          *to produce, distribute, deliver, or store hydrogen.*

11          (5) *LIGHT DUTY VEHICLE.*—*The term “light*  
12          *duty vehicle” means a car or truck classified by the*  
13          *Department of Transportation as a Class I or IIA ve-*  
14          *hicle.*

15          (6) *SECRETARY.*—*The term “Secretary” means*  
16          *the Secretary of Energy.*

17 **§ 802. Plan**

18          *Not later than 6 months after the date of enactment*  
19          *of this Act, the Secretary shall transmit to Congress a co-*  
20          *ordinated plan for the programs described in this title and*  
21          *any other programs of the Department that are directly re-*  
22          *lated to fuel cells or hydrogen. The plan shall describe, at*  
23          *a minimum—*

1           (1) *the agenda for the next 5 years for the pro-*  
2           *grams authorized under this title, including the agen-*  
3           *da for each activity enumerated in section 803(a);*

4           (2) *the types of entities that will carry out the*  
5           *activities under this title and what role each entity*  
6           *is expected to play;*

7           (3) *the milestones that will be used to evaluate*  
8           *the programs for the next 5 years;*

9           (4) *the most significant technical and nontech-*  
10          *nical hurdles that stand in the way of achieving the*  
11          *goals described in section 803(b), and how the pro-*  
12          *grams will address those hurdles; and*

13          (5) *the policy assumptions that are implicit in*  
14          *the plan, including any assumptions that would affect*  
15          *the sources of hydrogen or the marketability of hydro-*  
16          *gen-related products.*

17 **§ 803. Programs**

18          (a) *ACTIVITIES.*—*The Secretary, in partnership with*  
19          *the private sector, shall conduct programs to address—*

20               (1) *production of hydrogen from diverse energy*  
21               *sources, including—*

22                     (A) *fossil fuels, which may include carbon*  
23                     *capture and sequestration;*

24                     (B) *hydrogen-carrier fuels (including eth-*  
25                     *anol and methanol);*

1                   (C) *renewable energy resources, including*  
2                   *biomass; and*

3                   (D) *nuclear energy;*

4                   (2) *use of hydrogen for commercial, industrial,*  
5                   *and residential electric power generation;*

6                   (3) *safe delivery of hydrogen or hydrogen-carrier*  
7                   *fuels, including—*

8                   (A) *transmission by pipeline and other dis-*  
9                   *tribution methods; and*

10                  (B) *convenient and economic refueling of*  
11                  *vehicles either at central refueling stations or*  
12                  *through distributed on-site generation;*

13                  (4) *advanced vehicle technologies, including—*

14                   (A) *engine and emission control systems;*

15                   (B) *energy storage, electric propulsion, and*  
16                   *hybrid systems;*

17                   (C) *automotive materials; and*

18                   (D) *other advanced vehicle technologies;*

19                  (5) *storage of hydrogen or hydrogen-carrier fuels,*  
20                  *including development of materials for safe and eco-*  
21                  *nomie storage in gaseous, liquid, or solid form at re-*  
22                  *fueling facilities and onboard vehicles;*

23                  (6) *development of safe, durable, affordable, and*  
24                  *efficient fuel cells, including fuel-flexible fuel cell*  
25                  *power systems, improved manufacturing processes,*

1 *high-temperature membranes, cost-effective fuel proc-*  
 2 *essing for natural gas, fuel cell stack and system reli-*  
 3 *ability, low temperature operation, and cold start ca-*  
 4 *pability;*

5 *(7) development, after consultation with the pri-*  
 6 *vate sector, of necessary codes and standards (includ-*  
 7 *ing international codes and standards and voluntary*  
 8 *consensus standards adopted in accordance with OMB*  
 9 *Circular A–119) and safety practices for the produc-*  
 10 *tion, distribution, storage, and use of hydrogen, hy-*  
 11 *drogen-carrier fuels, and related products;*

12 *(8) a public education program to develop im-*  
 13 *proved knowledge and acceptability of hydrogen-based*  
 14 *systems; and*

15 *(9) the ability of domestic automobile manufac-*  
 16 *turers to manufacture commercially available com-*  
 17 *petitive hybrid vehicle technologies in the United*  
 18 *States.*

19 *(b) PROGRAM GOALS.—*

20 *(1) VEHICLES.—For vehicles, the goals of the*  
 21 *program are—*

22 *(A) to enable a commitment by automakers*  
 23 *no later than year 2015 to offer safe, affordable,*  
 24 *and technically viable hydrogen fuel cell vehicles*  
 25 *in the mass consumer market; and*



1           *(B) to enable production, delivery, and ac-*  
2           *ceptance by consumers of model year 2020 hy-*  
3           *drogen fuel cell and other hydrogen-powered ve-*  
4           *hicles that will have—*

5                     *(i) a range of at least 300 miles;*

6                     *(ii) improved performance and ease of*  
7           *driving;*

8                     *(iii) safety and performance com-*  
9           *parable to vehicle technologies in the mar-*  
10          *ket; and*

11                    *(iv) when compared to light duty vehi-*  
12          *cles in model year 2003—*

13                    *(I) fuel economy that is substan-*  
14          *tially higher;*

15                    *(II) substantially lower emissions*  
16          *of air pollutants; and*

17                    *(III) equivalent or improved vehi-*  
18          *cle fuel system crash integrity and oc-*  
19          *cupant protection.*

20            (2) *HYDROGEN ENERGY AND ENERGY INFRA-*  
21          *STRUCTURE.—For hydrogen energy and energy infra-*  
22          *structure, the goals of the program are to enable a*  
23          *commitment not later than 2015 that will lead to in-*  
24          *frastructure by 2020 that will provide—*

25                    *(A) safe and convenient refueling;*

1                   (B) improved overall efficiency;

2                   (C) widespread availability of hydrogen  
3                   from domestic energy sources through—

4                         (i) production, with consideration of  
5                         emissions levels;

6                         (ii) delivery, including transmission  
7                         by pipeline and other distribution methods  
8                         for hydrogen; and

9                         (iii) storage, including storage in sur-  
10                         face transportation vehicles;

11                   (D) hydrogen for fuel cells, internal combus-  
12                   tion engines, and other energy conversion devices  
13                   for portable, stationary, and transportation ap-  
14                   plications; and

15                   (E) other technologies consistent with the  
16                   Department's plan.

17                   (3) FUEL CELLS.—The goals for fuel cells and  
18                   their portable, stationary, and transportation appli-  
19                   cations are to enable—

20                         (A) safe, economical, and environmentally  
21                         sound hydrogen fuel cells;

22                         (B) fuel cells for light duty and other vehi-  
23                         cles; and

24                         (C) other technologies consistent with the  
25                   Department's plan.

1       (c) *DEMONSTRATION.*—*In carrying out the programs*  
2 *under this section, the Secretary shall fund a limited num-*  
3 *ber of demonstration projects, consistent with a determina-*  
4 *tion of the maturity, cost-effectiveness, and environmental*  
5 *impacts of technologies supporting each project. In selecting*  
6 *projects under this subsection, the Secretary shall, to the*  
7 *extent practicable and in the public interest, select projects*  
8 *that—*

9               (1) *involve using hydrogen and related products*  
10 *at existing facilities or installations, such as existing*  
11 *office buildings, military bases, vehicle fleet centers,*  
12 *transit bus authorities, or units of the National Park*  
13 *System;*

14              (2) *depend on reliable power from hydrogen to*  
15 *carry out essential activities;*

16              (3) *lead to the replication of hydrogen tech-*  
17 *nologies and draw such technologies into the market-*  
18 *place;*

19              (4) *include vehicle, portable, and stationary*  
20 *demonstrations of fuel cell and hydrogen-based energy*  
21 *technologies;*

22              (5) *address the interdependency of demand for*  
23 *hydrogen fuel cell applications and hydrogen fuel in-*  
24 *frastructure;*

1           (6) *raise awareness of hydrogen technology*  
2           *among the public;*

3           (7) *facilitate identification of an optimum tech-*  
4           *nology among competing alternatives;*

5           (8) *address distributed generation using renew-*  
6           *able sources; and*

7           (9) *address applications specific to rural or re-*  
8           *mote locations, including isolated villages and is-*  
9           *lands, the National Park System, and tribal entities.*

10 *The Secretary shall give preference to projects which address*  
11 *multiple elements contained in paragraphs (1) through (9).*

12       (d) *DEPLOYMENT.—In carrying out the programs*  
13 *under this section, the Secretary shall, in partnership with*  
14 *the private sector, conduct activities to facilitate the deploy-*  
15 *ment of hydrogen energy and energy infrastructure, fuel*  
16 *cells, and advanced vehicle technologies.*

17       (e) *FUNDING.—*

18           (1) *IN GENERAL.—The Secretary shall carry out*  
19 *the programs under this section using a competitive,*  
20 *merit-based review process and consistent with the*  
21 *generally applicable Federal laws and regulations*  
22 *governing awards of financial assistance, contracts,*  
23 *or other agreements.*

24           (2) *RESEARCH CENTERS.—Activities under this*  
25 *section may be carried out by funding nationally rec-*

1      *ognized university-based or Federal laboratory re-*  
2      *search centers.*

3      *(f) COST SHARING.—*

4            *(1) RESEARCH AND DEVELOPMENT.—Except as*  
5      *otherwise provided in this title, for research and de-*  
6      *velopment programs carried out under this title the*  
7      *Secretary shall require a commitment from non-Fed-*  
8      *eral sources of at least 20 percent of the cost of the*  
9      *project. The Secretary may reduce or eliminate the*  
10     *non-Federal requirement under this paragraph if the*  
11     *Secretary determines that the research and develop-*  
12     *ment is of a basic or fundamental nature or involves*  
13     *technical analyses or educational activities.*

14           *(2) DEMONSTRATION AND COMMERCIAL APPLICA-*  
15     *TION.—Except as otherwise provided in this title, the*  
16     *Secretary shall require at least 50 percent of the costs*  
17     *directly and specifically related to any demonstration*  
18     *or commercial application project under this title to*  
19     *be provided from non-Federal sources. The Secretary*  
20     *may reduce the non-Federal requirement under this*  
21     *paragraph if the Secretary determines that the reduc-*  
22     *tion is necessary and appropriate considering the*  
23     *technological risks involved in the project and is nec-*  
24     *essary to meet the objectives of this title.*

1           (3) *CALCULATION OF AMOUNT.*—*In calculating*  
2           *the amount of the non-Federal commitment under*  
3           *paragraph (1) or (2), the Secretary may include per-*  
4           *sonnel, services, equipment, and other resources.*

5           (4) *SIZE OF NON-FEDERAL SHARE.*—*The Sec-*  
6           *retary may consider the size of the non-Federal share*  
7           *in selecting projects.*

8           (g) *DISCLOSURE.*—*Section 623 of the Energy Policy*  
9           *Act of 1992 (42 U.S.C. 13293) relating to the protection*  
10          *of information shall apply to projects carried out through*  
11          *grants, cooperative agreements, or contracts under this title.*

12       **§ 804. Interagency task force**

13          (a) *ESTABLISHMENT.*—*Not later than 120 days after*  
14          *the date of enactment of this Act, the President shall estab-*  
15          *lish an interagency task force chaired by the Secretary with*  
16          *representatives from each of the following:*

17               (1) *The Office of Science and Technology Policy*  
18               *within the Executive Office of the President.*

19               (2) *The Department of Transportation.*

20               (3) *The Department of Defense.*

21               (4) *The Department of Commerce (including the*  
22               *National Institute of Standards and Technology).*

23               (5) *The Department of State.*

24               (6) *The Environmental Protection Agency.*

1           (7) *The National Aeronautics and Space Admin-*  
2           *istration.*

3           (8) *Other Federal agencies as the Secretary de-*  
4           *termines appropriate.*

5           (b) *DUTIES.—*

6           (1) *PLANNING.—The interagency task force shall*  
7           *work toward—*

8                   (A) *a safe, economical, and environmentally*  
9                   *sound fuel infrastructure for hydrogen and hy-*  
10                  *drogen-carrier fuels, including an infrastructure*  
11                  *that supports buses and other fleet transpor-*  
12                  *tation;*

13                  (B) *fuel cells in government and other ap-*  
14                  *plications, including portable, stationary, and*  
15                  *transportation applications;*

16                  (C) *distributed power generation, including*  
17                  *the generation of combined heat, power, and*  
18                  *clean fuels including hydrogen;*

19                  (D) *uniform hydrogen codes, standards, and*  
20                  *safety protocols; and*

21                  (E) *vehicle hydrogen fuel system integrity*  
22                  *safety performance.*

23           (2) *ACTIVITIES.—The interagency task force may*  
24           *organize workshops and conferences, may issue publi-*

1        *cations, and may create databases to carry out its du-*  
2        *ties. The interagency task force shall—*

3                *(A) foster the exchange of generic, non-*  
4                *proprietary information and technology among*  
5                *industry, academia, and government;*

6                *(B) develop and maintain an inventory and*  
7                *assessment of hydrogen, fuel cells, and other ad-*  
8                *vanced technologies, including the commercial*  
9                *capability of each technology for the economic*  
10               *and environmentally safe production, distribu-*  
11               *tion, delivery, storage, and use of hydrogen;*

12               *(C) integrate technical and other informa-*  
13               *tion made available as a result of the programs*  
14               *and activities under this title;*

15               *(D) promote the marketplace introduction of*  
16               *infrastructure for hydrogen fuel vehicles; and*

17               *(E) conduct an education program to pro-*  
18               *vide hydrogen and fuel cell information to poten-*  
19               *tial end-users.*

20        *(c) AGENCY COOPERATION.—The heads of all agencies,*  
21        *including those whose agencies are not represented on the*  
22        *interagency task force, shall cooperate with and furnish in-*  
23        *formation to the interagency task force, the Advisory Com-*  
24        *mittee, and the Department.*



1 **§ 805. Advisory Committee**

2       (a) *ESTABLISHMENT.*—*The Hydrogen Technical and*  
3 *Fuel Cell Advisory Committee is established to advise the*  
4 *Secretary on the programs and activities under this title.*

5       (b) *MEMBERSHIP.*—

6           (1) *MEMBERS.*—*The Advisory Committee shall*  
7 *be comprised of not fewer than 12 nor more than 25*  
8 *members. The members shall be appointed by the Sec-*  
9 *retary to represent domestic industry, academia, pro-*  
10 *fessional societies, government agencies, Federal lab-*  
11 *oratories, previous advisory panels, and financial, en-*  
12 *vironmental, and other appropriate organizations*  
13 *based on the Department's assessment of the technical*  
14 *and other qualifications of committee members and*  
15 *the needs of the Advisory Committee.*

16           (2) *TERMS.*—*The term of a member of the Advi-*  
17 *sory Committee shall not be more than 3 years. The*  
18 *Secretary may appoint members of the Advisory*  
19 *Committee in a manner that allows the terms of the*  
20 *members serving at any time to expire at spaced in-*  
21 *tervals so as to ensure continuity in the functioning*  
22 *of the Advisory Committee. A member of the Advisory*  
23 *Committee whose term is expiring may be re-*  
24 *appointed.*

1           (3) *CHAIRPERSON.*—*The Advisory Committee*  
2       *shall have a chairperson, who is elected by the mem-*  
3       *bers from among their number.*

4       (c) *REVIEW.*—*The Advisory Committee shall review*  
5       *and make recommendations to the Secretary on—*

6           (1) *the implementation of programs and activi-*  
7       *ties under this title;*

8           (2) *the safety, economical, and environmental*  
9       *consequences of technologies for the production, dis-*  
10      *tribution, delivery, storage, or use of hydrogen energy*  
11      *and fuel cells; and*

12          (3) *the plan under section 802.*

13      (d) *RESPONSE.*—

14          (1) *CONSIDERATION OF RECOMMENDATIONS.*—  
15      *The Secretary shall consider, but need not adopt, any*  
16      *recommendations of the Advisory Committee under*  
17      *subsection (c).*

18          (2) *BIENNIAL REPORT.*—*The Secretary shall*  
19      *transmit a biennial report to Congress describing any*  
20      *recommendations made by the Advisory Committee*  
21      *since the previous report. The report shall include a*  
22      *description of how the Secretary has implemented or*  
23      *plans to implement the recommendations, or an ex-*  
24      *planation of the reasons that a recommendation will*

1       *not be implemented. The report shall be transmitted*  
2       *along with the President's budget proposal.*

3       *(e) SUPPORT.—The Secretary shall provide resources*  
4       *necessary in the judgment of the Secretary for the Advisory*  
5       *Committee to carry out its responsibilities under this title.*

6       **§806. External review**

7       *(a) PLAN.—The Secretary shall enter into an arrange-*  
8       *ment with the National Academy of Sciences to review the*  
9       *plan prepared under section 802, which shall be completed*  
10      *not later than 6 months after the Academy receives the plan.*  
11      *Not later than 45 days after receiving the review, the Sec-*  
12      *retary shall transmit the review to Congress along with a*  
13      *plan to implement the review's recommendations or an ex-*  
14      *planation of the reasons that a recommendation will not*  
15      *be implemented.*

16      *(b) ADDITIONAL REVIEW.—The Secretary shall enter*  
17      *into an arrangement with the National Academy of*  
18      *Sciences under which the Academy will review the pro-*  
19      *grams under section 803 during the fourth year following*  
20      *the date of enactment of this Act. The Academy's review*  
21      *shall include the research priorities and technical mile-*  
22      *stones, and evaluate the progress toward achieving them.*  
23      *The review shall be completed not later than 5 years after*  
24      *the date of enactment of this Act. Not later than 45 days*  
25      *after receiving the review, the Secretary shall transmit the*

1 *review to Congress along with a plan to implement the re-*  
2 *view's recommendations or an explanation for the reasons*  
3 *that a recommendation will not be implemented.*

4 **§ 807. Miscellaneous provisions**

5       (a) *REPRESENTATION.*—*The Secretary may represent*  
6 *the United States interests with respect to activities and*  
7 *programs under this title, in coordination with the Depart-*  
8 *ment of Transportation, the National Institute of Stand-*  
9 *ards and Technology, and other relevant Federal agencies,*  
10 *before governments and nongovernmental organizations in-*  
11 *cluding—*

12               (1) *other Federal, State, regional, and local gov-*  
13 *ernments and their representatives;*

14               (2) *industry and its representatives, including*  
15 *members of the energy and transportation industries;*  
16 *and*

17               (3) *in consultation with the Department of*  
18 *State, foreign governments and their representatives*  
19 *including international organizations.*

20       (b) *REGULATORY AUTHORITY.*—*Nothing in this title*  
21 *shall be construed to alter the regulatory authority of the*  
22 *Department.*

1 **§808. Savings clause**

2 *Nothing in this title shall be construed to affect the*  
3 *authority of the Secretary of Transportation that may exist*  
4 *prior to the date of enactment of this Act with respect to—*

5 *(1) research into, and regulation of, hydrogen-*  
6 *powered vehicles fuel systems integrity, standards,*  
7 *and safety under subtitle VI of title 49, United States*  
8 *Code;*

9 *(2) regulation of hazardous materials transpor-*  
10 *tation under chapter 51 of title 49, United States*  
11 *Code;*

12 *(3) regulation of pipeline safety under chapter*  
13 *601 of title 49, United States Code;*

14 *(4) encouragement and promotion of research,*  
15 *development, and deployment activities relating to*  
16 *advanced vehicle technologies under section 5506 of*  
17 *title 49, United States Code;*

18 *(5) regulation of motor vehicle safety under*  
19 *chapter 301 of title 49, United States Code;*

20 *(6) automobile fuel economy under chapter 329*  
21 *of title 49, United States Code; or*

22 *(7) representation of the interests of the United*  
23 *States with respect to the activities and programs*  
24 *under the authority of title 49, United States Code.*

1 **§ 809. Authorization of appropriations**

2 *There are authorized to be appropriated to the Sec-*  
3 *retary to carry out this title, in addition to any amounts*  
4 *made available for these purposes under other Acts—*

5 *(1) \$546,000,000 for fiscal year 2006;*

6 *(2) \$750,000,000 for fiscal year 2007;*

7 *(3) \$850,000,000 for fiscal year 2008;*

8 *(4) \$900,000,000 for fiscal year 2009; and*

9 *(5) \$1,000,000,000 for fiscal year 2010.*

10 **§ 810. Solar and wind technologies**

11 *(a) SOLAR ENERGY TECHNOLOGIES.—The Secretary*  
12 *shall—*

13 *(1) prepare a detailed roadmap for carrying out*  
14 *the provisions in this subtitle related to solar energy*  
15 *technologies and for implementing the recommenda-*  
16 *tions related to solar energy technologies that are in-*  
17 *cluded in the report transmitted under subsection (c);*

18 *(2) provide for the establishment of 5 projects in*  
19 *geographic areas that are regionally and climatically*  
20 *diverse to demonstrate the production of hydrogen at*  
21 *solar energy facilities, including one demonstration*  
22 *project at a national laboratory or institution of*  
23 *higher education;*

24 *(3) establish a research and development pro-*  
25 *gram—*

1           (A) to develop optimized concentrating solar  
2           power devices that may be used for the produc-  
3           tion of both electricity and hydrogen; and

4           (B) to evaluate the use of thermochemical  
5           cycles for hydrogen production at the tempera-  
6           tures attainable with concentrating solar power  
7           devices;

8           (4) coordinate with activities sponsored by the  
9           Department of Energy's Office of Nuclear Energy,  
10          Science, and Technology on high-temperature mate-  
11          rials, thermochemical cycles, and economic issues re-  
12          lated to solar energy;

13          (5) provide for the construction and operation of  
14          new concentrating solar power devices or solar power  
15          cogeneration facilities that produce hydrogen either  
16          concurrently with, or independently of, the production  
17          of electricity;

18          (6) support existing facilities and research pro-  
19          grams dedicated to the development and advancement  
20          of concentrating solar power devices; and

21          (7) establish a program—

22               (A) to research and develop methods that  
23               use electricity from photovoltaic devices for the  
24               onsite production of hydrogen, such that no in-  
25               termediate transmission or distribution infra-

1           *structure is required or used and future demand*  
2           *growth may be accommodated;*

3           *(B) to evaluate the economics of small-scale*  
4           *electrolysis for hydrogen production; and*

5           *(C) to research the potential of modular*  
6           *photovoltaic devices for the development of a hy-*  
7           *drogen infrastructure, the security implications*  
8           *of a hydrogen infrastructure, and the benefits po-*  
9           *tentially derived from a hydrogen infrastructure.*

10       (b) *WIND ENERGY TECHNOLOGIES.—The Secretary*  
11       *shall—*

12           *(1) prepare a detailed roadmap for carrying out*  
13           *the provisions in this subtitle related to wind energy*  
14           *technologies and for implementing the recommenda-*  
15           *tions related to wind energy technologies that are in-*  
16           *cluded in the report transmitted under subsection (c);*  
17           *and*

18           *(2) provide for the establishment of 5 projects in*  
19           *geographic areas that are regionally and climatically*  
20           *diverse to demonstrate the production of hydrogen at*  
21           *existing wind energy facilities, including one dem-*  
22           *onstration project at a national laboratory or institu-*  
23           *tion of higher education.*

24       (c) *PROGRAM SUPPORT.—The Secretary shall support*  
25       *research programs at institutions of higher education for*



1 *the development of solar energy technologies and wind en-*  
 2 *ergy technologies for the production of hydrogen. The re-*  
 3 *search programs supported under this subsection shall—*

4           (1) *enhance fellowship and faculty assistance*  
 5       *programs;*

6           (2) *provide support for fundamental research;*

7           (3) *encourage collaborative research among in-*  
 8 *dustry, national laboratories, and institutions of*  
 9 *higher education;*

10          (4) *support communication and outreach; and*

11          (5) *to the greatest extent possible—*

12               (A) *be located in geographic areas that are*  
 13 *regionally and climatically diverse; and*

14               (B) *be located at part B institutions, mi-*  
 15 *nority institutions, and institutions of higher*  
 16 *education located in States participating in the*  
 17 *Experimental Program to Stimulate Competitive*  
 18 *Research of the Department of Energy.*

19       (d) *INSTITUTIONS OF HIGHER EDUCATION AND NA-*  
 20 *TIONAL LABORATORY INTERACTIONS.—In conjunction with*  
 21 *the programs supported under this section, the Secretary*  
 22 *shall develop sabbatical, fellowship, and visiting scientist*  
 23 *programs to encourage national laboratories and institu-*  
 24 *tions of higher education to share and exchange personnel.*

25       (e) *DEFINITIONS.—For purposes of this section—*

1           (1) the term “concentrating solar power devices”  
2           means devices that concentrate the power of the sun  
3           by reflection or refraction to improve the efficiency of  
4           a photovoltaic or thermal generation process;

5           (2) the term “institution of higher education”  
6           has the meaning given to that term in section 101(a)  
7           of the Higher Education Act of 1965 (20 U.S.C.  
8           1001(a));

9           (3) the term “minority institution” has the  
10          meaning given to that term in section 365 of the  
11          Higher Education Act of 1965 (20 U.S.C. 1067k);

12          (4) the term “part B institution” has the mean-  
13          ing given to that term in section 322 of the Higher  
14          Education Act of 1965 (20 U.S.C. 1061); and

15          (5) the term “photovoltaic devices” means devices  
16          that convert light directly into electricity through a  
17          solid-state, semiconductor process.

18                   **TITLE IX—STUDIES AND**  
19                   **PROGRAM SUPPORT**

20   **§ 901. Goals**

21           (a) *IN GENERAL.*—The Secretary shall conduct a bal-  
22   anced set of programs of study to support Federal energy  
23   policy and programs by the Department. Such programs  
24   shall be focused on—

1           (1) *increasing the efficiency of all energy inten-*  
2           *sive sectors through conservation and improved tech-*  
3           *nologies;*

4           (2) *promoting diversity of energy supply;*

5           (3) *decreasing the Nation's dependence on foreign*  
6           *energy supplies;*

7           (4) *improving United States energy security;*  
8           *and*

9           (5) *decreasing the environmental impact of en-*  
10          *ergy-related activities.*

11          (b) *GOALS.—The Secretary shall publish measurable*  
12          *5-year cost and performance-based goals with each annual*  
13          *budget submission in at least the following areas:*

14               (1) *Energy efficiency for buildings, energy-con-*  
15               *suming industries, and vehicles.*

16               (2) *Electric energy generation (including distrib-*  
17               *uted generation), transmission, and storage.*

18               (3) *Renewable energy technologies including*  
19               *wind power, photovoltaics, solar thermal systems, geo-*  
20               *thermal energy, hydrogen-fueled systems, biomass-*  
21               *based systems, biofuels, and hydropower.*

22               (4) *Fossil energy including power generation,*  
23               *onshore and offshore oil and gas resource recovery,*  
24               *and transportation.*

1           (5) *Nuclear energy including programs for exist-*  
2           *ing and advanced reactors and education of future*  
3           *specialists.*

4           (c) *PUBLIC COMMENT.*—*The Secretary shall provide*  
5           *mechanisms for input on the annually published goals from*  
6           *industry, university, and other public sources.*

7           (d) *EFFECT OF GOALS.*—

8           (1) *NO NEW AUTHORITY OR REQUIREMENT.*—  
9           *Nothing in subsection (a) or the annually published*  
10          *goals shall—*

11                   (A) *create any new—*

12                           (i) *authority for any Federal agency;*

13                           *or*

14                           (ii) *requirement for any other person;*

15                   (B) *be used by a Federal agency to support*  
16           *the establishment of regulatory standards or reg-*  
17           *ulatory requirements; or*

18                   (C) *alter the authority of the Secretary to*  
19           *make grants or other awards.*

20          (2) *NO LIMITATION.*—*Nothing in this subsection*  
21          *shall be construed to limit the authority of the Sec-*  
22          *retary to impose conditions on grants or other awards*  
23          *based on the goals in subsection (a) or any subsequent*  
24          *modification thereto.*

1 **§902. Definitions**

2 *For purposes of this title:*

3 (1) *DEPARTMENT.*—*The term “Department”*  
4 *means the Department of Energy.*

5 (2) *DEPARTMENTAL MISSION.*—*The term “de-*  
6 *partmental mission” means any of the functions vest-*  
7 *ed in the Secretary of Energy by the Department of*  
8 *Energy Organization Act (42 U.S.C. 7101 et seq.) or*  
9 *other law.*

10 (3) *INSTITUTION OF HIGHER EDUCATION.*—*The*  
11 *term “institution of higher education” has the mean-*  
12 *ing given that term in section 101(a) of the Higher*  
13 *Education Act of 1965 (20 U.S.C. 1001(a)).*

14 (4) *SECRETARY.*—*The term “Secretary” means*  
15 *the Secretary of Energy.*

16 **Subtitle A—Energy Efficiency**

17 **§904. Energy efficiency**

18 (a) *IN GENERAL.*—*The following sums are authorized*  
19 *to be appropriated to the Secretary for energy efficiency and*  
20 *conservation activities, including activities authorized*  
21 *under this subtitle:*

22 (1) *For fiscal year 2006, \$616,000,000.*

23 (2) *For fiscal year 2007, \$695,000,000.*

24 (3) *For fiscal year 2008, \$772,000,000.*

25 (4) *For fiscal year 2009, \$865,000,000.*

26 (5) *For fiscal year 2010, \$920,000,000.*

1       (b) *ALLOCATIONS.—From amounts authorized under*  
2 *subsection (a), the following sums are authorized:*

3           (1) *For activities under section 905—*

4               (A) *for fiscal year 2006, \$20,000,000;*

5               (B) *for fiscal year 2007, \$30,000,000;*

6               (C) *for fiscal year 2008, \$50,000,000;*

7               (D) *for fiscal year 2009, \$50,000,000; and*

8               (E) *for fiscal year 2010, \$50,000,000.*

9           (2) *For activities under section 907—*

10               (A) *for fiscal year 2006, \$4,000,000; and*

11               (B) *for each of fiscal years 2007 through*  
12 *2010, \$7,000,000.*

13           (3) *For activities under section 908—*

14               (A) *for fiscal year 2006, \$20,000,000;*

15               (B) *for fiscal year 2007, \$25,000,000;*

16               (C) *for fiscal year 2008, \$30,000,000;*

17               (D) *for fiscal year 2009, \$35,000,000; and*

18               (E) *for fiscal year 2010, \$40,000,000.*

19           (4) *For activities under section 909, \$2,000,000*  
20 *for each of fiscal years 2007 through 2010.*

21       (c) *EXTENDED AUTHORIZATION.—There are author-*  
22 *ized to be appropriated to the Secretary for activities under*  
23 *section 905, \$50,000,000 for each of fiscal years 2011*  
24 *through 2015.*

1       (d) *LIMITATION ON USE OF FUNDS.*—None of the  
 2 funds authorized to be appropriated under this section may  
 3 be used for—

4           (1) the issuance and implementation of energy  
 5 efficiency regulations;

6           (2) the Weatherization Assistance Program  
 7 under part A of title IV of the Energy Conservation  
 8 and Production Act (42 U.S.C. 6861 et seq.);

9           (3) the State Energy Program under part D of  
 10 title III of the Energy Policy and Conservation Act  
 11 (42 U.S.C. 6321 et seq.); or

12           (4) the Federal Energy Management Program  
 13 under part 3 of title V of the National Energy Con-  
 14 servation Policy Act (42 U.S.C. 8251 et seq.).

15 **§905. Next Generation Lighting Initiative**

16       (a) *IN GENERAL.*—The Secretary shall carry out a  
 17 Next Generation Lighting Initiative in accordance with this  
 18 section to support activities related to advanced solid-state  
 19 lighting technologies based on white light emitting diodes.

20       (b) *OBJECTIVES.*—The objectives of the initiative shall  
 21 be to develop advanced solid-state organic and inorganic  
 22 lighting technologies based on white light emitting diodes  
 23 that, compared to incandescent and fluorescent lighting  
 24 technologies, are longer lasting; more energy-efficient; and  
 25 cost-competitive, and have less environmental impact.

1       (c) *INDUSTRY ALLIANCE.*—*The Secretary shall, not*  
2 *later than 3 months after the date of enactment of this sec-*  
3 *tion, competitively select an Industry Alliance to represent*  
4 *participants that are private, for-profit firms which, as a*  
5 *group, are broadly representative of United States solid*  
6 *state lighting expertise as a whole.*

7       (d) *STUDY.*—

8               (1) *IN GENERAL.*—*The Secretary shall carry out*  
9 *the activities of the Next Generation Lighting Initia-*  
10 *tive through competitively awarded grants, including*  
11 *to Industry Alliance participants, National Labora-*  
12 *tories, and institutions of higher education.*

13              (2) *ASSISTANCE FROM THE INDUSTRY ALLI-*  
14 *ANCE.*—*The Secretary shall annually solicit from the*  
15 *Industry Alliance—*

16                   (A) *comments to identify solid-state lighting*  
17 *technology needs;*

18                   (B) *assessment of the progress of the Initia-*  
19 *tive’s research activities; and*

20                   (C) *assistance in annually updating solid-*  
21 *state lighting technology roadmaps.*

22              (3) *AVAILABILITY OF INFORMATION AND ROAD-*  
23 *MAPS.*—*The information and roadmaps under para-*  
24 *graph (2) shall be available to the public and public*  
25 *response shall be solicited by the Secretary.*



1       (e) *INTELLECTUAL PROPERTY*.—*The Secretary may*  
2 *require, in accordance with the authorities provided in sec-*  
3 *tion 202(a)(ii) of title 35, United States Code, section 152*  
4 *of the Atomic Energy Act of 1954 (42 U.S.C. 2182), and*  
5 *section 9 of the Federal Nonnuclear Energy Research and*  
6 *Development Act of 1974 (42 U.S.C. 5908), that—*

7               (1) *for any new invention resulting from activi-*  
8 *ties under subsection (d)—*

9                       (A) *the Industry Alliance members that are*  
10 *active participants in research, development, and*  
11 *demonstration activities related to the advanced*  
12 *solid-state lighting technologies that are the sub-*  
13 *ject of this section shall be granted first option*  
14 *to negotiate with the invention owner nonexclu-*  
15 *sive licenses and royalties for uses of the inven-*  
16 *tion related to solid-state lighting on terms that*  
17 *are reasonable under the circumstances; and*

18                       (B)(i) *for 1 year after a United States pat-*  
19 *ent is issued for the invention, the patent holder*  
20 *shall not negotiate any license or royalty with*  
21 *any entity that is not a participant in the In-*  
22 *dustry Alliance described in subparagraph (A);*  
23 *and*

24                       (ii) *during the year described in clause (i),*  
25 *the invention owner shall negotiate nonexclusive*

1           *licenses and royalties in good faith with any in-*  
 2           *terested participant in the Industry Alliance de-*  
 3           *scribed in subparagraph (A); and*

4           *(2) such other terms as the Secretary determines*  
 5           *are required to promote accelerated commercialization*  
 6           *of inventions made under the Initiative.*

7           *(f) NATIONAL ACADEMY REVIEW.—The Secretary shall*  
 8           *enter into an arrangement with the National Academy of*  
 9           *Sciences to conduct periodic reviews of the Next Generation*  
 10          *Lighting Initiative. The Academy shall review the prior-*  
 11          *ities, technical milestones, and plans for technology transfer*  
 12          *and progress towards achieving them. The Secretary shall*  
 13          *consider the results of such reviews in evaluating the infor-*  
 14          *mation obtained under subsection (d)(2).*

15          *(g) DEFINITIONS.—As used in this section:*

16           *(1) ADVANCED SOLID-STATE LIGHTING.—The*  
 17           *term “advanced solid-state lighting” means a*  
 18           *semiconducting device package and delivery system*  
 19           *that produces white light using externally applied*  
 20           *voltage.*

21           *(2) INDUSTRY ALLIANCE.—The term “Industry*  
 22           *Alliance” means an entity selected by the Secretary*  
 23           *under subsection (c).*

24           *(3) WHITE LIGHT EMITTING DIODE.—The term*  
 25           *“white light emitting diode” means a semiconducting*

1       package, utilizing either organic or inorganic mate-  
2       rials, that produces white light using externally ap-  
3       plied voltage.

4   **§ 906. National Building Performance Initiative**

5       (a) *INTERAGENCY GROUP*.—Not later than 90 days  
6   after the date of enactment of this Act, the President shall  
7   establish an interagency group to develop, in coordination  
8   with the advisory committee established under subsection  
9   (e), a National Building Performance Initiative (in this  
10  section referred to as the “Initiative”). The interagency  
11  group shall be co-chaired by appropriate officials of the De-  
12  partment and the Department of Commerce, who shall  
13  jointly arrange for the provision of necessary administra-  
14  tive support to the group.

15       (b) *INTEGRATION OF EFFORTS*.—The Initiative, work-  
16  ing with the National Institute of Building Sciences, shall  
17  integrate Federal, State, and voluntary private sector ef-  
18  forts to reduce the costs of construction, operation, mainte-  
19  nance, and renovation of commercial, industrial, institu-  
20  tional, and residential buildings.

21       (c) *DEPARTMENT OF ENERGY ROLE*.—Within the Fed-  
22  eral portion of the Initiative, the Department shall be the  
23  lead agency for all aspects of building performance related  
24  to use and conservation of energy.

25       (d) *ADVISORY COMMITTEE*.—

1           (1) *ESTABLISHMENT.*—*The Secretary, in con-*  
 2           *sultation with the Secretary of Commerce and the Di-*  
 3           *rector of the Office of Science and Technology Policy,*  
 4           *shall establish an advisory committee to—*

5                     (A) *analyze and provide recommendations*  
 6                     *on potential private sector roles and participa-*  
 7                     *tion in the Initiative; and*

8                     (B) *review and provide recommendations on*  
 9                     *the plan described in subsection (c).*

10           (2) *MEMBERSHIP.*—*Membership of the advisory*  
 11           *committee shall include representatives with a broad*  
 12           *range of appropriate expertise, including expertise*  
 13           *in—*

14                     (A) *building technology;*

15                     (B) *architecture, engineering, and building*  
 16                     *materials and systems; and*

17                     (C) *the residential, commercial, and indus-*  
 18                     *trial sectors of the construction industry.*

19           (e) *CONSTRUCTION.*—*Nothing in this section provides*  
 20           *any Federal agency with new authority to regulate building*  
 21           *performance.*

22   **§907. Secondary electric vehicle battery use program**

23           (a) *DEFINITIONS.*—*For purposes of this section:*

24                     (1) *ASSOCIATED EQUIPMENT.*—*The term “associ-*  
 25                     *ated equipment” means equipment located where the*

1        *batteries will be used that is necessary to enable the*  
2        *use of the energy stored in the batteries.*

3            (2) *BATTERY.*—*The term “battery” means an en-*  
4        *ergy storage device that previously has been used to*  
5        *provide motive power in a vehicle powered in whole*  
6        *or in part by electricity.*

7            (b) *PROGRAM.*—*The Secretary shall establish and con-*  
8        *duct a program of study for the secondary use of batteries*  
9        *if the Secretary finds that there are sufficient numbers of*  
10       *such batteries to support the program. The program shall*  
11       *be—*

12            (1) *designed to demonstrate the use of batteries*  
13        *in secondary applications, including utility and com-*  
14        *mercial power storage and power quality;*

15            (2) *structured to evaluate the performance, in-*  
16        *cluding useful service life and costs, of such batteries*  
17        *in field operations, and the necessary supporting in-*  
18        *frastructure, including reuse and disposal of batteries;*  
19        *and*

20            (3) *coordinated with ongoing secondary battery*  
21        *use programs at the National Laboratories and in in-*  
22        *dustry.*

23            (c) *SOLICITATION.*—*Not later than 180 days after the*  
24        *date of enactment of this Act, if the Secretary finds under*  
25        *subsection (b) that there are sufficient numbers of batteries*

1 *to support the program, the Secretary shall solicit proposals*  
2 *to demonstrate the secondary use of batteries and associated*  
3 *equipment and supporting infrastructure in geographic lo-*  
4 *cations throughout the United States. The Secretary may*  
5 *make additional solicitations for proposals if the Secretary*  
6 *determines that such solicitations are necessary to carry out*  
7 *this section.*

8 *(d) SELECTION OF PROPOSALS.—*

9 *(1) IN GENERAL.—The Secretary shall, not later*  
10 *than 90 days after the closing date established by the*  
11 *Secretary for receipt of proposals under subsection*  
12 *(c), select up to 5 proposals which may receive finan-*  
13 *cial assistance under this section, subject to the avail-*  
14 *ability of appropriations.*

15 *(2) DIVERSITY; ENVIRONMENTAL EFFECT.—In*  
16 *selecting proposals, the Secretary shall consider diver-*  
17 *sity of battery type, geographic and climatic diver-*  
18 *sity, and life-cycle environmental effects of the ap-*  
19 *proaches.*

20 *(3) LIMITATION.—No 1 project selected under*  
21 *this section shall receive more than 25 percent of the*  
22 *funds authorized for the program under this section.*

23 *(4) OPTIMIZATION OF FEDERAL RESOURCES.—*  
24 *The Secretary shall consider the extent of involvement*  
25 *of State or local government and other persons in*

1        *each demonstration project to optimize use of Federal*  
2        *resources.*

3            (5) *OTHER CRITERIA.*—*The Secretary may con-*  
4        *sider such other criteria as the Secretary considers*  
5        *appropriate.*

6        (e) *CONDITIONS.*—*The Secretary shall require that—*

7            (1) *relevant information be provided to the De-*  
8        *partment, the users of the batteries, the proposers, and*  
9        *the battery manufacturers;*

10          (2) *the proposer provide at least 50 percent of*  
11        *the costs associated with the proposal; and*

12          (3) *the proposer provide to the Secretary such in-*  
13        *formation regarding the disposal of the batteries as*  
14        *the Secretary may require to ensure that the proposer*  
15        *disposes of the batteries in accordance with applicable*  
16        *law.*

17    **§908. *Energy efficiency study initiative***

18          (a) *ESTABLISHMENT.*—*The Secretary shall establish*  
19        *an Energy Efficiency Science Initiative to be managed by*  
20        *the Assistant Secretary in the Department with responsi-*  
21        *bility for energy conservation under section 203(a)(9) of the*  
22        *Department of Energy Organization Act (42 U.S.C.*  
23        *7133(a)(9)), in consultation with the Director of the Office*  
24        *of Science, for grants to be competitively awarded and sub-*  
25        *ject to peer review for studies relating to energy efficiency.*

9        *The Secretary shall conduct a program of study on ad-*  
10 *vanced control devices to improve the energy efficiency of*  
11 *electric motors used in heating, ventilation, air condi-*  
12 *tioning, and comparable systems.*

15 **§911. *Distributed energy and electric energy systems***

(a) *IN GENERAL.*—The following sums are authorized to be appropriated to the Secretary for distributed energy and electric energy systems activities, including activities authorized under this subtitle:

- 20 (1) For fiscal year 2006, \$190,000,000.
- 21 (2) For fiscal year 2007, \$200,000,000.
- 22 (3) For fiscal year 2008, \$220,000,000.
- 23 (4) For fiscal year 2009, \$240,000,000.
- 24 (5) For fiscal year 2010, \$260,000,000.



1       (b) *MICRO-COGENERATION ENERGY TECHNOLOGY.*—  
 2       From amounts authorized under subsection (a),  
 3       \$20,000,000 for each of fiscal years 2006 and 2007 is au-  
 4       thorized for activities under section 914.

5       **§913. High power density industry program**

6       The Secretary shall establish a comprehensive program  
 7       of study to improve energy efficiency of high power density  
 8       facilities, including data centers, server farms, and tele-  
 9       communications facilities. Such program shall consider  
 10      technologies that provide significant improvement in ther-  
 11      mal controls, metering, load management, peak load reduc-  
 12      tion, or the efficient cooling of electronics.

13      **§916. Reciprocating power**

14      The Secretary shall conduct a program of study re-  
 15      garding fuel system optimization and emissions reduction  
 16      after-treatment technologies for industrial reciprocating en-  
 17      gines. Such after-treatment technologies shall use processes  
 18      that reduce emissions by recirculating exhaust gases and  
 19      shall be designed to be retrofitted to any new or existing  
 20      diesel or natural gas engine used for power generation,  
 21      peaking power generation, combined heat and power, or  
 22      compression.

23      **§917. Advanced portable power devices**

24      (a) *PROGRAM.*—The Secretary shall—

1           (1) *establish a program to develop working mod-*  
 2           *els of small scale portable power devices; and*

3           (2) *to the fullest extent practicable, identify and*  
 4           *utilize the resources of universities that have shown*  
 5           *expertise with respect to advanced portable power de-*  
 6           *vices for either civilian or military use.*

7           (b) *ORGANIZATION.—The universities identified and*  
 8           *utilized under subsection (a)(2) are authorized to establish*  
 9           *an organization to promote small scale portable power de-*  
 10          *vices.*

11          (c) *DEFINITION.—For purposes of this section, the*  
 12          *term “small scale portable power device” means a field*  
 13          *deployable portable mechanical or electromechanical device*  
 14          *that can be used for applications such as communications,*  
 15          *computation, mobility enhancement, weapons systems, opti-*  
 16          *cal devices, cooling, sensors, medical devices and active bio-*  
 17          *logical agent detection systems.*

18          (d) *AUTHORIZATION OF APPROPRIATIONS.—There are*  
 19          *authorized to be appropriated to the Secretary for carrying*  
 20          *out this section \$8,000,000 for the period encompassing fis-*  
 21          *cal years 2006 through 2010.*

## 22                           **Subtitle C—Renewable Energy**

### 23   **§918. Renewable energy**

24          (a) *IN GENERAL.—The following sums are authorized*  
 25          *to be appropriated to the Secretary for renewable energy*

1 *activities, including activities authorized under this sub-*  
2 *title:*

3           (1) *For fiscal year 2006, \$480,000,000.*

4           (2) *For fiscal year 2007, \$550,000,000.*

5           (3) *For fiscal year 2008, \$610,000,000.*

6           (4) *For fiscal year 2009, \$659,000,000.*

7           (5) *For fiscal year 2010, \$710,000,000.*

8           (b) *BIOENERGY.—From the amounts authorized under*  
9 *subsection (a), the following sums are authorized to be ap-*  
10 *propriated to carry out section 919:*

11           (1) *For fiscal year 2006, \$135,425,000.*

12           (2) *For fiscal year 2007, \$155,600,000.*

13           (3) *For fiscal year 2008, \$167,650,000.*

14           (4) *For fiscal year 2009, \$180,000,000.*

15           (5) *For fiscal year 2010, \$192,000,000.*

16           (c) *CONCENTRATING SOLAR POWER.—From amounts*  
17 *authorized under subsection (a), the following sums are au-*  
18 *thorized to be appropriated to carry out section 920:*

19           (1) *For fiscal year 2006, \$20,000,000.*

20           (2) *For fiscal year 2007, \$40,000,000.*

21           (3) *For each of fiscal years 2008, 2009, and*  
22 *2010, \$50,000,000.*

23           (d) *PUBLIC BUILDINGS.—From the amounts author-*  
24 *ized under subsection (a), \$30,000,000 for each of the fiscal*

1 *years 2006 through 2010 are authorized to be appropriated*  
2 *to carry out section 922.*

3 *(e) LIMITS ON USE OF FUNDS.—*

4 *(1) NO FUNDS FOR RENEWABLE SUPPORT AND*  
5 *IMPLEMENTATION.—None of the funds authorized to*  
6 *be appropriated under this section may be used for*  
7 *Renewable Support and Implementation.*

8 *(2) GRANTS.—Of the funds authorized under*  
9 *subsection (b), not less than \$5,000,000 for each fiscal*  
10 *year shall be made available for grants to Histori-*  
11 *cally Black Colleges and Universities, Tribal Colleges,*  
12 *and Hispanic-Serving Institutions.*

13 *(3) REGIONAL FIELD VERIFICATION PROGRAM.—*  
14 *Of the funds authorized under subsection (a), not less*  
15 *than \$4,000,000 for each fiscal year shall be made*  
16 *available for the Regional Field Verification Program*  
17 *of the Department.*

18 *(4) OFF-STREAM PUMPED STORAGE HYDRO-*  
19 *POWER.—Of the funds authorized under subsection*  
20 *(a), such sums as may be necessary shall be made*  
21 *available for demonstration projects of off-stream*  
22 *pumped storage hydropower.*

23 *(f) CONSULTATION.—In carrying out this subtitle, the*  
24 *Secretary, in consultation with the Secretary of Agri-*  
25 *culture, shall demonstrate the use of advanced wind power*

1 *technology, including combined use with coal gasification;*  
2 *biomass; geothermal energy systems; and other renewable*  
3 *energy technologies to assist in delivering electricity to*  
4 *rural and remote locations.*

5 **§919. Bioenergy programs**

6 (a) *DEFINITIONS.—For the purposes of this section:*

7 (1) *The term “agricultural byproducts” includes*  
8 *waste products, including poultry fat and poultry*  
9 *waste.*

10 (2) *The term “cellulosic biomass” means any*  
11 *portion of a crop containing lignocellulose or hemi-*  
12 *cellulose, including barley grain, grapeseed, forest*  
13 *thinnings, rice bran, rice hulls, rice straw, soybean*  
14 *matter, and sugarcane bagasse, or any crop grown*  
15 *specifically for the purpose of producing cellulosic*  
16 *feedstocks.*

17 (b) *PROGRAM.—The Secretary shall conduct a pro-*  
18 *gram of study for bioenergy, including—*

19 (1) *biopower energy systems;*

20 (2) *biofuels;*

21 (3) *bio-based products;*

22 (4) *integrated biorefineries that may produce*  
23 *biopower, biofuels, and bio-based products;*

24 (5) *cross-cutting research and development in*  
25 *feedstocks and enzymes; and*

1           (6) *economic analysis.*

2           (c) *BIOFUELS AND BIO-BASED PRODUCTS.—The goals*  
3 *of the biofuels and bio-based products programs shall be to*  
4 *promote, in partnership with industry—*

5           (1) *advanced biochemical and thermochemical*  
6 *conversion technologies capable of making biofuels*  
7 *that are price-competitive with gasoline or diesel in*  
8 *either internal combustion engines or fuel cell-pow-*  
9 *ered vehicles, and bio-based products from a variety*  
10 *of feedstocks, including grains, cellulosic biomass, and*  
11 *other agricultural byproducts; and*

12           (2) *advanced biotechnology processes capable of*  
13 *making biofuels and bio-based products with empha-*  
14 *sis on development of biorefinery technologies using*  
15 *enzyme-based processing systems.*

16 **§920. Concentrating solar power study program**

17           (a) *IN GENERAL.—The Secretary shall conduct a pro-*  
18 *gram of study to evaluate the potential of concentrating*  
19 *solar power for hydrogen production, including cogenera-*  
20 *tion approaches for both hydrogen and electricity. Such pro-*  
21 *gram shall take advantage of existing facilities to the extent*  
22 *possible and shall include—*

23           (1) *development of optimized technologies that*  
24 *are common to both electricity and hydrogen produc-*  
25 *tion;*

1           (2) *evaluation of thermochemical cycles for hy-*  
2           *drogen production at the temperatures attainable*  
3           *with concentrating solar power;*

4           (3) *evaluation of materials issues for the*  
5           *thermochemical cycles described in paragraph (2);*

6           (4) *system architectures and economics studies;*  
7           *and*

8           (5) *coordination with activities in the Advanced*  
9           *Reactor Hydrogen Cogeneration Project on high tem-*  
10          *perature materials, thermochemical cycles, and eco-*  
11          *nomics issues.*

12          (b) *ASSESSMENT.—In carrying out the program under*  
13          *this section, the Secretary shall—*

14               (1) *assess conflicting guidance on the economic*  
15               *potential of concentrating solar power for electricity*  
16               *production received from the National Research Coun-*  
17               *cil report entitled “Renewable Power Pathways: A*  
18               *Review of the U.S. Department of Energy’s Renew-*  
19               *able Energy Programs” in 2000 and subsequent De-*  
20               *partment-funded reviews of that report; and*

21               (2) *provide an assessment of the potential im-*  
22               *pect of the technology before, or concurrent with, sub-*  
23               *mission of the fiscal year 2008 budget.*

24          (c) *REPORT.—Not later than 5 years after the date of*  
25          *enactment of this Act, the Secretary shall provide a report*

1 *to Congress on the economic and technical potential for elec-*  
2 *tricity or hydrogen production, with or without cogenera-*  
3 *tion, with concentrating solar power.*

4 **§921. Miscellaneous projects**

5 *The Secretary may conduct studies for—*

6 *(1) ocean energy, including wave energy; and*

7 *(2) the combined use of renewable energy tech-*  
8 *nologies with one another and with other energy tech-*  
9 *nologies, including the combined use of wind power*  
10 *and coal gasification technologies.*

11 **§922. Renewable energy in public buildings**

12 *(a) TECHNOLOGY TRANSFER PROGRAM.—The Sec-*  
13 *retary shall establish a program for the transfer of innova-*  
14 *tive technologies for solar and other renewable energy*  
15 *sources in buildings owned or operated by a State or local*  
16 *government, and for the dissemination of information re-*  
17 *sulting from an assessment of such program to interested*  
18 *parties.*

19 *(b) LIMIT ON FEDERAL FUNDING.—The Secretary*  
20 *shall provide under this section no more than 40 percent*  
21 *of the incremental costs of the solar or other renewable en-*  
22 *ergy source project funded.*

23 *(c) REQUIREMENT.—As part of the application for*  
24 *awards under this section, the Secretary shall require all*  
25 *applicants—*



1           (1) *to demonstrate a continuing commitment to*  
2           *the use of solar and other renewable energy sources in*  
3           *buildings they own or operate; and*

4           (2) *to state how they expect any award to further*  
5           *their transition to the significant use of renewable en-*  
6           *ergy.*

7   **§ 923. University biodiesel program**

8           (a) *IN GENERAL.*—*The Secretary shall establish a pro-*  
9           *gram regarding the feasibility of the operation of diesel elec-*  
10          *tric power generators, using biodiesel fuels, with ratings as*  
11          *high as B100 at a university electric generation facility.*  
12          *The program shall examine—*

13               (1) *heat rates of diesel fuels with large quantities*  
14               *of cellulosic content;*

15               (2) *the reliability of operation of various fuel*  
16               *blends;*

17               (3) *performance in cold or freezing weather;*

18               (4) *stability of fuel after extended storage; and*

19               (5) *other criteria, as determined by the Sec-*  
20               *retary.*

21          (b) *AUTHORIZATION OF APPROPRIATIONS.*—*There are*  
22          *authorized to be appropriated to the Secretary \$400,000 to*  
23          *carry out subsection (a). Such funds shall remain available*  
24          *until expended.*

**Subtitle D—Nuclear Energy**

**§ 929. Alternatives to industrial radioactive sources**

(a) *STUDY.*—The Secretary shall conduct a study and provide a report to Congress not later than August 1, 2006.

The study shall—

(1) survey industrial applications of large radioactive sources, including well-logging sources;

(2) review current domestic and international Department, Department of Defense, Department of State, and commercial programs to manage and dispose of radioactive sources;

(3) discuss disposal options and practices for currently deployed or future sources and, if deficiencies are noted in existing disposal options or practices for either deployed or future sources, recommend options to remedy deficiencies; and

(4) develop a program plan for research and development to develop alternatives to large industrial sources that reduce safety, environmental, or proliferation risks to either workers using the sources or the public.

(b) *PROGRAM.*—The Secretary shall establish a research and development program to implement the program plan developed under subsection (a)(4). The program shall include miniaturized particle accelerators for well-logging or other industrial applications and portable accelerators

1 *for production of short-lived radioactive materials at an in-*  
 2 *dustrial site.*

3 **§ 930. Geological isolation of spent fuel**

4 *The Secretary shall conduct a study to determine the*  
 5 *feasibility of deep borehole disposal of spent nuclear fuel*  
 6 *and high-level radioactive waste. The study shall emphasize*  
 7 *geological, chemical, and hydrological characterization of,*  
 8 *and design of engineered structures for, deep borehole envi-*  
 9 *ronments. Not later than 1 year after the date of enactment*  
 10 *of this Act, the Secretary shall transmit the study to Con-*  
 11 *gress.*

12 **Subtitle E—Fossil Energy**

13 **PART I—STUDIES AND PROGRAM SUPPORT**

14 **§ 931. Fossil energy**

15 *(a) IN GENERAL.—The following sums are authorized*  
 16 *to be appropriated to the Secretary for fossil energy activi-*  
 17 *ties, including activities authorized under this part:*

18 *(1) For fiscal year 2006, \$530,000,000.*

19 *(2) For fiscal year 2007, \$556,000,000.*

20 *(3) For fiscal year 2008, \$583,000,000.*

21 *(4) For fiscal year 2009, \$611,000,000.*

22 *(5) For fiscal year 2010, \$626,000,000.*

23 *(b) ALLOCATIONS.—From amounts authorized under*  
 24 *subsection (a), the following sums are authorized:*

1           (1) *For activities under section 932(b)(2),*  
 2           \$28,000,000 for each of the fiscal years 2006 through  
 3           2010.

4           (2) *For activities under section 934—*

5                   (A) *for fiscal year 2006, \$12,000,000;*

6                   (B) *for fiscal year 2007, \$15,000,000; and*

7                   (C) *for each of fiscal years 2008 through*  
 8           2010, \$20,000,000.

9           (3) *For activities under section 935—*

10                   (A) *for fiscal year 2006, \$259,000,000;*

11                   (B) *for fiscal year 2007, \$272,000,000;*

12                   (C) *for fiscal year 2008, \$285,000,000;*

13                   (D) *for fiscal year 2009, \$298,000,000; and*

14                   (E) *for fiscal year 2010, \$308,000,000.*

15           (4) *For the Office of Arctic Energy under section*  
 16           3197 of the *Floyd D. Spence National Defense Au-*  
 17           *thorization Act for Fiscal Year 2001 (42 U.S.C.*  
 18           7144d), \$25,000,000 for each of fiscal years 2006  
 19           through 2010.

20           (5) *For activities under section 933, \$4,000,000*  
 21           *for fiscal year 2006 and \$2,000,000 for each of fiscal*  
 22           *years 2007 through 2010.*

23           (c) *EXTENDED AUTHORIZATION.—There are author-*  
 24           *ized to be appropriated to the Secretary for the Office of*  
 25           *Arctic Energy under section 3197 of the Floyd D. Spence*

1 *National Defense Authorization Act for Fiscal Year 2001*  
 2 *(42 U.S.C. 7144d), \$25,000,000 for each of fiscal years 2009*  
 3 *through 2012.*

4 *(d) LIMITS ON USE OF FUNDS.—*

5 *(1) NO FUNDS FOR CERTAIN PROGRAMS.—None*  
 6 *of the funds authorized under this section may be*  
 7 *used for Fossil Energy Environmental Restoration or*  
 8 *Import/Export Authorization.*

9 *(2) INSTITUTIONS OF HIGHER EDUCATION.—Of*  
 10 *the funds authorized under subsection (b)(2), not less*  
 11 *than 20 percent of the funds appropriated for each*  
 12 *fiscal year shall be dedicated to activities carried out*  
 13 *at institutions of higher education.*

14 **§932. Oil and gas studies**

15 *(a) OIL AND GAS STUDIES.—The Secretary shall con-*  
 16 *duct a program of studies on oil and gas, including—*

17 *(1) exploration and production;*

18 *(2) gas hydrates;*

19 *(3) reservoir life and extension;*

20 *(4) transportation and distribution infrastruc-*  
 21 *ture;*

22 *(5) ultraclean fuels;*

23 *(6) heavy oil and oil shale;*

24 *(7) related environmental research; and*

25 *(8) compressed natural gas marine transport.*

1       (b) *FUEL CELLS.*—

2               (1) *IN GENERAL.*—*The Secretary shall conduct a*  
3       *program of studies on fuel cells for low-cost, high-effi-*  
4       *ciency, fuel-flexible, modular power systems.*

5               (2) *IMPROVED MANUFACTURING PRODUCTION*  
6       *AND PROCESSES.*—*The studies under paragraph (1)*  
7       *shall include fuel cell technology for commercial, resi-*  
8       *dential, and transportation applications, and distrib-*  
9       *uted generation systems, utilizing improved manufac-*  
10       *turing production and processes.*

11       (c) *NATURAL GAS AND OIL DEPOSITS REPORT.*—*Not*  
12       *later than 2 years after the date of enactment of this Act,*  
13       *and every 2 years thereafter, the Secretary of the Interior,*  
14       *in consultation with other appropriate Federal agencies,*  
15       *shall transmit a report to Congress of the latest estimates*  
16       *of natural gas and oil reserves, reserves growth, and undis-*  
17       *covered resources in Federal and State waters off the coast*  
18       *of Louisiana and Texas.*

19       (d) *INTEGRATED CLEAN POWER AND ENERGY.*—

20               (1) *NATIONAL CENTER OR CONSORTIUM OF EX-*  
21       *CELLENCE.*—*The Secretary shall establish a national*  
22       *center or consortium of excellence in clean energy and*  
23       *power generation to address the Nation's critical de-*  
24       *pendence on energy and the need to reduce emissions.*

1           (2) *PROGRAM.*—*The center or consortium shall*  
2           *conduct a program integrating the following focus*  
3           *areas:*

4                   (A) *Efficiency and reliability of gas tur-*  
5                   *bines for power generation.*

6                   (B) *Reduction in emissions from power gen-*  
7                   *eration.*

8                   (C) *Promotion of energy conservation*  
9                   *issues.*

10                  (D) *Effectively utilizing alternative fuels*  
11                  *and renewable energy.*

12                  (E) *Advanced materials technology for oil*  
13                  *and gas exploration and utilization in harsh en-*  
14                  *vironments.*

15                  (F) *Education on energy and power genera-*  
16                  *tion issues.*

17 **§933. Technology transfer**

18           *The Secretary shall establish a competitive program*  
19           *to award a contract to a nonprofit entity for the purpose*  
20           *of transferring technologies developed with public funds.*  
21           *The entity selected under this section shall have experience*  
22           *in offshore oil and gas technology management, in the*  
23           *transfer of technologies developed with public funds to the*  
24           *offshore and maritime industry, and in management of an*  
25           *offshore and maritime industry consortium. The program*

1 consortium selected under section 942 shall not be eligible  
2 for selection under this section. When appropriate, the Sec-  
3 retary shall consider utilizing the entity selected under this  
4 section when implementing the activities authorized by sec-  
5 tion 975.

6 **§934. Coal mining technologies**

7 (a) *ESTABLISHMENT.*—The Secretary shall carry out  
8 a program of studies on coal mining technologies. The Sec-  
9 retary shall cooperate with appropriate Federal agencies,  
10 coal producers, trade associations, equipment manufactur-  
11 ers, institutions of higher education with mining engineer-  
12 ing departments, and other relevant entities.

13 (b) *PROGRAM.*—The activities carried out under this  
14 section shall—

15 (1) be guided by the mining priorities identified  
16 by the Mining Industry of the Future Program and  
17 in the recommendations from relevant reports of the  
18 National Academy of Sciences on mining technologies;  
19 and

20 (2) include activities exploring minimization of  
21 contaminants in mined coal that contribute to envi-  
22 ronmental concerns.

23 **§935. Coal and related technologies program**

24 (a) *IN GENERAL.*—In addition to the programs au-  
25 thorized under title IV, the Secretary shall conduct a pro-



1 *gram of technology to study coal and power systems, includ-*  
2 *ing programs to facilitate production and generation of*  
3 *coal-based power through—*

4 *(1) innovations for existing plants;*

5 *(2) integrated gasification combined cycle;*

6 *(3) advanced combustion systems;*

7 *(4) turbines for synthesis gas derived from coal;*

8 *(5) carbon capture and sequestration;*

9 *(6) coal-derived transportation fuels and chemi-*  
10 *cals;*

11 *(7) solid fuels and feedstocks;*

12 *(8) advanced studies;*

13 *(9) advanced separation technologies; and*

14 *(10) a joint project for permeability enhance-*  
15 *ment in coals for natural gas production and carbon*  
16 *dioxide sequestration.*

17 *(b) COST AND PERFORMANCE GOALS.—In carrying*  
18 *out programs authorized by this section, the Secretary shall*  
19 *identify cost and performance goals for coal-based tech-*  
20 *nologies that would permit the continued cost-competitive*  
21 *use of coal for electricity generation, as chemical feedstocks,*  
22 *and as transportation fuel in 2007, 2015, and the years*  
23 *after 2020. In establishing such cost and performance goals,*  
24 *the Secretary shall—*

1           (1) *consider activities and studies undertaken to*  
2           *date by industry in cooperation with the Department*  
3           *in support of such assessment;*

4           (2) *consult with interested entities, including*  
5           *coal producers, industries using coal, organizations to*  
6           *promote coal and advanced coal technologies, environ-*  
7           *mental organizations, and organizations representing*  
8           *workers;*

9           (3) *not later than 120 days after the date of en-*  
10          *actment of this Act, publish in the Federal Register*  
11          *proposed draft cost and performance goals for public*  
12          *comments; and*

13          (4) *not later than 180 days after the date of en-*  
14          *actment of this Act and every 4 years thereafter, sub-*  
15          *mit to Congress a report describing final cost and*  
16          *performance goals for such technologies that includes*  
17          *a list of technical milestones as well as an expla-*  
18          *nation of how programs authorized in this section*  
19          *will not duplicate the activities authorized under the*  
20          *Clean Coal Power Initiative authorized under subtitle*  
21          *A of title IV.*

22   **§936. Complex Well Technology Testing Facility**

23          *The Secretary, in coordination with industry leaders*  
24          *in extended research drilling technology, shall establish a*  
25          *Complex Well Technology Testing Facility at the Rocky*

1 *Mountain Oilfield Testing Center to increase the range of*  
2 *extended drilling technologies.*

3 ***PART II—ULTRA-DEEPWATER AND UNCONVEN-***  
4 ***TIONAL NATURAL GAS AND OTHER PETRO-***  
5 ***LEUM RESOURCES***

6 ***§941. Program authority***

7 *(a) IN GENERAL.—The Secretary shall carry out a*  
8 *program under this part regarding technologies for ultra-*  
9 *deepwater and unconventional natural gas and other petro-*  
10 *leum resource exploration and production, including ad-*  
11 *dressing the technology challenges for small producers, safe*  
12 *operations, and environmental mitigation (including re-*  
13 *duction of greenhouse gas emissions and sequestration of*  
14 *carbon).*

15 *(b) PROGRAM ELEMENTS.—The program under this*  
16 *part shall address the following areas, including improving*  
17 *safety and minimizing environmental impacts of activities*  
18 *within each area:*

19 *(1) Ultra-deepwater technology, including drill-*  
20 *ing to formations in the Outer Continental Shelf to*  
21 *depths greater than 15,000 feet.*

22 *(2) Ultra-deepwater architecture.*

23 *(3) Unconventional natural gas and other petro-*  
24 *leum resource exploration and production technology,*

1       *including the technology challenges of small pro-*  
2       *ducers.*

3       (c) *LIMITATION ON LOCATION OF FIELD ACTIVITIES.*—

4       *Field activities under the program under this part shall*  
5       *be carried out only—*

6               (1) *in—*

7                       (A) *areas in the territorial waters of the*  
8                       *United States not under any Outer Continental*  
9                       *Shelf moratorium as of September 30, 2002;*

10                      (B) *areas onshore in the United States on*  
11                      *public land administered by the Secretary of the*  
12                      *Interior available for oil and gas leasing, where*  
13                      *consistent with applicable law and land use*  
14                      *plans; and*

15                      (C) *areas onshore in the United States on*  
16                      *State or private land, subject to applicable law;*  
17                      *and*

18                      (2) *with the approval of the appropriate Federal*  
19                      *or State land management agency or private land*  
20                      *owner.*

21       (d) *CONSULTATION WITH SECRETARY OF THE INTE-*  
22       *RIOR.*—*In carrying out this part, the Secretary shall con-*  
23       *sult regularly with the Secretary of the Interior.*

1 **§942. Ultra-deepwater Program**

2       (a) *IN GENERAL.*—*The Secretary shall carry out the*  
3 *activities under section 941(a), to maximize the use of the*  
4 *ultra-deepwater natural gas and other petroleum resources*  
5 *of the United States by increasing the supply of such re-*  
6 *sources, through reducing the cost and increasing the effi-*  
7 *ciency of exploration for and production of such resources,*  
8 *while improving safety and minimizing environmental im-*  
9 *pacts.*

10       (b) *ROLE OF THE SECRETARY.*—*The Secretary shall*  
11 *have ultimate responsibility for, and oversight of, all aspects*  
12 *of the program under this section.*

13       (c) *ROLE OF THE PROGRAM CONSORTIUM.*—

14               (1) *IN GENERAL.*—*The Secretary may contract*  
15 *with a consortium to—*

16                       (A) *manage awards pursuant to subsection*  
17                       (f)(4);

18                       (B) *make recommendations to the Secretary*  
19                       *for project solicitations;*

20                       (C) *disburse funds awarded under sub-*  
21 *section (f) as directed by the Secretary in accord-*  
22 *ance with the annual plan under subsection (e);*  
23 *and*

24                       (D) *carry out other activities assigned to*  
25 *the program consortium by this section.*

1           (2) *LIMITATION.*—*The Secretary may not assign*  
2           *any activities to the program consortium except as*  
3           *specifically authorized under this section.*

4           (3) *CONFLICT OF INTEREST.*—

5                 (A) *PROCEDURES.*—*The Secretary shall es-*  
6                 *tablish procedures—*

7                         (i) *to ensure that each board member,*  
8                         *officer, or employee of the program consor-*  
9                         *tium who is in a decision-making capacity*  
10                        *under subsection (f)(3) or (4) shall disclose*  
11                        *to the Secretary any financial interests in,*  
12                        *or financial relationships with, applicants*  
13                        *for or recipients of awards under this sec-*  
14                        *tion, including those of his or her spouse or*  
15                        *minor child, unless such relationships or in-*  
16                        *terests would be considered to be remote or*  
17                        *inconsequential; and*

18                       (ii) *to require any board member, offi-*  
19                        *cer, or employee with a financial relation-*  
20                        *ship or interest disclosed under clause (i) to*  
21                        *recuse himself or herself from any review*  
22                        *under subsection (f)(3) or oversight under*  
23                        *subsection (f)(4) with respect to such appli-*  
24                        *cant or recipient.*

1           (B) *FAILURE TO COMPLY.*—*The Secretary*  
2           *may disqualify an application or revoke an*  
3           *award under this section if a board member, offi-*  
4           *cer, or employee has failed to comply with proce-*  
5           *dures required under subparagraph (A)(ii).*

6           (d) *SELECTION OF THE PROGRAM CONSORTIUM.*—

7           (1) *IN GENERAL.*—*The Secretary shall select the*  
8           *program consortium through an open, competitive*  
9           *process.*

10          (2) *MEMBERS.*—*The program consortium may*  
11          *include corporations, trade associations, institutions*  
12          *of higher education, National Laboratories, or other*  
13          *research institutions. After submitting a proposal*  
14          *under paragraph (4), the program consortium may*  
15          *not add members without the consent of the Secretary.*

16          (3) *TAX STATUS.*—*The program consortium shall*  
17          *be an entity that is exempt from tax under section*  
18          *501(c)(3) of the Internal Revenue Code of 1986.*

19          (4) *SCHEDULE.*—*Not later than 180 days after*  
20          *the date of enactment of this Act, the Secretary shall*  
21          *solicit proposals from eligible consortia to perform the*  
22          *duties in subsection (c)(1), which shall be submitted*  
23          *not later than 360 days after the date of enactment*  
24          *of this Act. The Secretary shall select the program*

1       *consortium not later than 18 months after such date*  
2       *of enactment.*

3               (5) *APPLICATION.*—*Applicants shall submit a*  
4       *proposal including such information as the Secretary*  
5       *may require. At a minimum, each proposal shall—*

6                       (A) *list all members of the consortium;*

7                       (B) *fully describe the structure of the con-*  
8       *sortium, including any provisions relating to in-*  
9       *tellectual property; and*

10                      (C) *describe how the applicant would carry*  
11       *out the activities of the program consortium*  
12       *under this section.*

13               (6) *CRITERION.*—*The Secretary shall consider*  
14       *the amount of the fee an applicant proposes to receive*  
15       *under subsection (g) in selecting a consortium under*  
16       *this section.*

17       (e) *ANNUAL PLAN.*—

18               (1) *IN GENERAL.*—*The program under this sec-*  
19       *tion shall be carried out pursuant to an annual plan*  
20       *prepared by the Secretary in accordance with para-*  
21       *graph (2).*

22               (2) *DEVELOPMENT.*—

23                      (A) *SOLICITATION OF RECOMMENDA-*  
24       *TIONS.*—*Before drafting an annual plan under*  
25       *this subsection, the Secretary shall solicit specific*



1        *written recommendations from the program con-*  
2        *sortium for each element to be addressed in the*  
3        *plan, including those described in paragraph (4).*  
4        *The Secretary may request that the program*  
5        *consortium submit its recommendations in the*  
6        *form of a draft annual plan.*

7                (B) *SUBMISSION OF RECOMMENDATIONS;*  
8        *OTHER COMMENT.—The Secretary shall submit*  
9        *the recommendations of the program consortium*  
10       *under subparagraph (A) to the Ultra-Deepwater*  
11       *Advisory Committee established under section*  
12       *945(a) for review, and such Advisory Committee*  
13       *shall provide to the Secretary written comments*  
14       *by a date determined by the Secretary. The Sec-*  
15       *retary may also solicit comments from any other*  
16       *experts.*

17               (C) *CONSULTATION.—The Secretary shall*  
18       *consult regularly with the program consortium*  
19       *throughout the preparation of the annual plan.*

20               (3) *PUBLICATION.—The Secretary shall transmit*  
21       *to Congress and publish in the Federal Register the*  
22       *annual plan, along with any written comments re-*  
23       *ceived under paragraph (2)(A) and (B).*

1           (4) *CONTENTS.*—*The annual plan shall describe*  
2           *the ongoing and prospective activities of the program*  
3           *under this section and shall include—*

4                   (A) *a list of any solicitations for awards*  
5                   *that the Secretary plans to issue to carry out re-*  
6                   *search, development, demonstration, or commer-*  
7                   *cial application activities, including the topics*  
8                   *for such work, who would be eligible to apply, se-*  
9                   *lection criteria, and the duration of awards; and*

10                   (B) *a description of the activities expected*  
11                   *of the program consortium to carry out sub-*  
12                   *section (f)(4).*

13           (5) *ESTIMATES OF INCREASED ROYALTY RE-*  
14           *CEIPTS.*—*The Secretary, in consultation with the Sec-*  
15           *retary of the Interior, shall provide an annual report*  
16           *to Congress with the President’s budget on the esti-*  
17           *mated cumulative increase in Federal royalty receipts*  
18           *(if any) resulting from the implementation of this*  
19           *part. The initial report under this paragraph shall be*  
20           *submitted in the first President’s budget following the*  
21           *completion of the first annual plan required under*  
22           *this subsection.*

23           (f) *AWARDS.*—

24                   (1) *IN GENERAL.*—*The Secretary shall make*  
25                   *awards to carry out activities under the program*

1        *under this section. The program consortium shall not*  
2        *be eligible to receive such awards, but members of the*  
3        *program consortium may receive such awards.*

4            (2) *PROPOSALS.—The Secretary shall solicit pro-*  
5        *posals for awards under this subsection in such man-*  
6        *ner and at such time as the Secretary may prescribe,*  
7        *in consultation with the program consortium.*

8            (3) *REVIEW.—The Secretary shall make awards*  
9        *under this subsection through a competitive process,*  
10       *which shall include a review by individuals selected*  
11       *by the Secretary. Such individuals shall include, for*  
12       *each application, Federal officials, the program con-*  
13       *sortium, and non-Federal experts who are not board*  
14       *members, officers, or employees of the program consor-*  
15       *tium or of a member of the program consortium.*

16           (4) *OVERSIGHT.—*

17            (A) *IN GENERAL.—The program consortium*  
18        *shall oversee the implementation of awards under*  
19        *this subsection, consistent with the annual plan*  
20        *under subsection (e), including disbursing funds*  
21        *and monitoring activities carried out under such*  
22        *awards for compliance with the terms and condi-*  
23        *tions of the awards.*

24            (B) *EFFECT.—Nothing in subparagraph*  
25        (A) *shall limit the authority or responsibility of*

1           *the Secretary to oversee awards, or limit the au-*  
2           *thority of the Secretary to review or revoke*  
3           *awards.*

4                     (C) *PROVISION OF INFORMATION.*—*The Sec-*  
5           *retary shall provide to the program consortium*  
6           *the information necessary for the program con-*  
7           *sortium to carry out its responsibilities under*  
8           *this paragraph.*

9           (g) *ADMINISTRATIVE COSTS.*—

10                    (1) *IN GENERAL.*—*To compensate the program*  
11           *consortium for carrying out its activities under this*  
12           *section, the Secretary shall provide to the program*  
13           *consortium funds sufficient to administer the pro-*  
14           *gram. This compensation may include a management*  
15           *fee consistent with Department of Energy contracting*  
16           *practices and procedures.*

17                    (2) *ADVANCE.*—*The Secretary shall advance*  
18           *funds to the program consortium upon selection of the*  
19           *consortium, which shall be deducted from amounts to*  
20           *be provided under paragraph (1).*

21           (h) *AUDIT.*—*The Secretary shall retain an inde-*  
22           *pendent, commercial auditor to determine the extent to*  
23           *which funds provided to the program consortium, and funds*  
24           *provided under awards made under subsection (f), have*  
25           *been expended in a manner consistent with the purposes*

1 *and requirements of this part. The auditor shall transmit*  
2 *a report annually to the Secretary, who shall transmit the*  
3 *report to Congress, along with a plan to remedy any defi-*  
4 *ciencies cited in the report.*

5 **§943. Unconventional natural gas and other petro-**  
6 **leum resources Program**

7 (a) *IN GENERAL.*—*The Secretary shall carry out ac-*  
8 *tivities under subsection 941(b)(3), to maximize the use of*  
9 *the onshore unconventional natural gas and other petroleum*  
10 *resources of the United States, by increasing the supply of*  
11 *such resources, through reducing the cost and increasing the*  
12 *efficiency of exploration for and production of such re-*  
13 *sources, while improving safety and minimizing environ-*  
14 *mental impacts.*

15 (b) *AWARDS.*—

16 (1) *IN GENERAL.*—*The Secretary shall carry out*  
17 *this section through awards to consortia made*  
18 *through an open, competitive process. As a condition*  
19 *of award of funds, qualified consortia shall—*

20 (A) *demonstrate capability and experience*  
21 *in unconventional onshore natural gas or other*  
22 *petroleum technologies;*

23 (B) *provide a research plan that dem-*  
24 *onstrates how additional natural gas or oil pro-*  
25 *duction will be achieved; and*

1           (C) at the request of the Secretary, provide  
2           technical advice to the Secretary for the purposes  
3           of developing the annual plan required under  
4           subsection (e).

5           (2) *PRODUCTION POTENTIAL.*—The Secretary  
6           shall seek to ensure that the number and types of  
7           awards made under this subsection have reasonable  
8           potential to lead to additional oil and natural gas  
9           production on Federal lands.

10          (3) *SCHEDULE.*—To carry out this subsection,  
11          not later than 180 days after the date of enactment  
12          of this Act, the Secretary shall solicit proposals from  
13          consortia, which shall be submitted not later than 360  
14          days after the date of enactment of this Act. The Sec-  
15          retary shall select the first group of research consortia  
16          to receive awards under this subsection not later than  
17          18 months after such date of enactment.

18          (c) *AUDIT.*—The Secretary shall retain an inde-  
19          pendent, commercial auditor to determine the extent to  
20          which funds provided under awards made under this sec-  
21          tion have been expended in a manner consistent with the  
22          purposes and requirements of this part. The auditor shall  
23          transmit a report annually to the Secretary, who shall  
24          transmit the report to Congress, along with a plan to rem-  
25          edy any deficiencies cited in the report.

1       (d) *FOCUS AREAS FOR AWARDS.*—

2               (1) *UNCONVENTIONAL RESOURCES.*—Awards  
3       *from allocations under section 949(d)(2) shall focus*  
4       *on areas including advanced coalbed methane, deep*  
5       *drilling, natural gas production from tight sands,*  
6       *natural gas production from gas shales, stranded gas,*  
7       *innovative exploration and production techniques, en-*  
8       *hanced recovery techniques, and environmental miti-*  
9       *gation of unconventional natural gas and other petro-*  
10       *leum resources exploration and production.*

11              (2) *SMALL PRODUCERS.*—Awards from alloca-  
12       *tions under section 949(d)(3) shall be made to con-*  
13       *sortia consisting of small producers or organized pri-*  
14       *marily for the benefit of small producers, and shall*  
15       *focus on areas including complex geology involving*  
16       *rapid changes in the type and quality of the oil and*  
17       *gas reservoirs across the reservoir; low reservoir pres-*  
18       *sure; unconventional natural gas reservoirs in coal-*  
19       *beds, deep reservoirs, tight sands, or shales; and un-*  
20       *conventional oil reservoirs in tar sands and oil shales.*

21       (e) *ANNUAL PLAN.*—

22              (1) *IN GENERAL.*—The program under this sec-  
23       *tion shall be carried out pursuant to an annual plan*  
24       *prepared by the Secretary in accordance with para-*  
25       *graph (2).*

1           (2) *DEVELOPMENT.*—

2                   (A) *WRITTEN RECOMMENDATIONS.*—*Before*  
3                   *drafting an annual plan under this subsection,*  
4                   *the Secretary shall solicit specific written rec-*  
5                   *ommendations from the consortia receiving*  
6                   *awards under subsection (b) and the Unconven-*  
7                   *tional Resources Technology Advisory Committee*  
8                   *for each element to be addressed in the plan, in-*  
9                   *cluding those described in subparagraph (D).*

10                  (B) *CONSULTATION.*—*The Secretary shall*  
11                  *consult regularly with the consortia throughout*  
12                  *the preparation of the annual plan.*

13                  (C) *PUBLICATION.*—*The Secretary shall*  
14                  *transmit to Congress and publish in the Federal*  
15                  *Register the annual plan, along with any writ-*  
16                  *ten comments received under subparagraph (A).*

17                  (D) *CONTENTS.*—*The annual plan shall de-*  
18                  *scribe the ongoing and prospective activities*  
19                  *under this section and shall include a list of any*  
20                  *solicitations for awards that the Secretary plans*  
21                  *to issue to carry out activities, including the top-*  
22                  *ics for such work, who would be eligible to apply,*  
23                  *selection criteria, and the duration of awards.*

24                  (3) *ESTIMATES OF INCREASED ROYALTY RE-*  
25                  *CEIPTS.*—*The Secretary, in consultation with the Sec-*



1       retary of the Interior, shall provide an annual report  
2       to Congress with the President's budget on the esti-  
3       mated cumulative increase in Federal royalty receipts  
4       (if any) resulting from the implementation of this  
5       part. The initial report under this paragraph shall be  
6       submitted in the first President's budget following the  
7       completion of the first annual plan required under  
8       this subsection.

9   **§944. Additional requirements for awards**

10       (a) *DEMONSTRATION PROJECTS.*—An application for  
11       an award under this part for a demonstration project shall  
12       describe with specificity the intended commercial use of the  
13       technology to be demonstrated.

14       (b) *FLEXIBILITY IN LOCATING DEMONSTRATION*  
15       *PROJECTS.*—Subject to the limitation in section 941(c), a  
16       demonstration project under this part relating to an ultra-  
17       deepwater technology or an ultra-deepwater architecture  
18       may be conducted in deepwater depths.

19       (c) *INTELLECTUAL PROPERTY AGREEMENTS.*—If an  
20       award under this part is made to a consortium (other than  
21       the program consortium), the consortium shall provide to  
22       the Secretary a signed contract agreed to by all members  
23       of the consortium describing the rights of each member to  
24       intellectual property used or developed under the award.

1       (d) *TECHNOLOGY TRANSFER*.—2.5 percent of the  
2 amount of each award made under this part shall be des-  
3 ignated for technology transfer and outreach activities  
4 under this title.

5       (e) *COST SHARING REDUCTION FOR INDEPENDENT*  
6 *PRODUCERS*.—In applying the cost sharing requirements  
7 under section 972 to an award under this part the Sec-  
8 retary may reduce or eliminate the non-Federal require-  
9 ment if the Secretary determines that the reduction is nec-  
10 essary and appropriate considering the technological risks  
11 involved in the project.

12 **§945. Advisory committees**

13       (a) *ULTRA-DEEPWATER ADVISORY COMMITTEE*.—

14               (1) *ESTABLISHMENT*.—Not later than 270 days  
15 after the date of enactment of this Act, the Secretary  
16 shall establish an advisory committee to be known as  
17 the Ultra-Deepwater Advisory Committee.

18               (2) *MEMBERSHIP*.—The advisory committee  
19 under this subsection shall be composed of members  
20 appointed by the Secretary including—

21                       (A) individuals with extensive experience or  
22 operational knowledge of offshore natural gas  
23 and other petroleum exploration and production;

24                       (B) individuals broadly representative of  
25 the affected interests in ultra-deepwater natural

1           *gas and other petroleum production, including*  
 2           *interests in environmental protection and safe*  
 3           *operations;*

4           *(C) no individuals who are Federal employ-*  
 5           *ees; and*

6           *(D) no individuals who are board members,*  
 7           *officers, or employees of the program consortium.*

8           *(3) DUTIES.—The advisory committee under this*  
 9           *subsection shall—*

10           *(A) advise the Secretary on the development*  
 11           *and implementation of programs under this part*  
 12           *related to ultra-deepwater natural gas and other*  
 13           *petroleum resources; and*

14           *(B) carry out section 942(e)(2)(B).*

15           *(4) COMPENSATION.—A member of the advisory*  
 16           *committee under this subsection shall serve without*  
 17           *compensation but shall receive travel expenses in ac-*  
 18           *cordance with applicable provisions under subchapter*  
 19           *I of chapter 57 of title 5, United States Code.*

20           *(b) UNCONVENTIONAL RESOURCES TECHNOLOGY AD-*  
 21           *VISORY COMMITTEE.—*

22           *(1) ESTABLISHMENT.—Not later than 270 days*  
 23           *after the date of enactment of this Act, the Secretary*  
 24           *shall establish an advisory committee to be known as*

1       *the Unconventional Resources Technology Advisory*  
2       *Committee.*

3           (2) *MEMBERSHIP.*—*The advisory committee*  
4       *under this subsection shall be composed of members*  
5       *appointed by the Secretary including—*

6           (A) *a majority of members who are employ-*  
7       *ees or representatives of independent producers of*  
8       *natural gas and other petroleum, including*  
9       *small producers;*

10          (B) *individuals with extensive research ex-*  
11       *perience or operational knowledge of unconven-*  
12       *tional natural gas and other petroleum resource*  
13       *exploration and production;*

14          (C) *individuals broadly representative of*  
15       *the affected interests in unconventional natural*  
16       *gas and other petroleum resource exploration*  
17       *and production, including interests in environ-*  
18       *mental protection and safe operations; and*

19          (D) *no individuals who are Federal employ-*  
20       *ees.*

21          (3) *DUTIES.*—*The advisory committee under this*  
22       *subsection shall advise the Secretary on the develop-*  
23       *ment and implementation of activities under this*  
24       *part related to unconventional natural gas and other*  
25       *petroleum resources.*

1           (4) *COMPENSATION.*—A member of the advisory  
 2           committee under this subsection shall serve without  
 3           compensation but shall receive travel expenses in ac-  
 4           cordance with applicable provisions under subchapter  
 5           I of chapter 57 of title 5, United States Code.

6           (c) *PROHIBITION.*—No advisory committee established  
 7           under this section shall make recommendations on funding  
 8           awards to particular consortia or other entities, or for spe-  
 9           cific projects.

10   **§946. Limits on participation**

11           An entity shall be eligible to receive an award under  
 12           this part only if the Secretary finds—

13           (1) that the entity's participation in the pro-  
 14           gram under this part would be in the economic inter-  
 15           est of the United States; and

16           (2) that either—

17                   (A) the entity is a United States-owned en-  
 18                   tity organized under the laws of the United  
 19                   States; or

20                   (B) the entity is organized under the laws  
 21                   of the United States and has a parent entity or-  
 22                   ganized under the laws of a country that af-  
 23                   fords—

24                           (i) to United States-owned entities op-  
 25                           portunities, comparable to those afforded to

1           any other entity, to participate in any co-  
 2           operative research venture similar to those  
 3           authorized under this part;

4           (ii) to United States-owned entities  
 5           local investment opportunities comparable  
 6           to those afforded to any other entity; and

7           (iii) adequate and effective protection  
 8           for the intellectual property rights of United  
 9           States-owned entities.

10 **§947. Sunset**

11       The authority provided by this part shall terminate  
 12   on September 30, 2014.

13 **§948. Definitions**

14       In this part:

15           (1) *DEEPWATER*.—The term “deepwater” means  
 16       a water depth that is greater than 200 but less than  
 17       1,500 meters.

18           (2) *INDEPENDENT PRODUCER OF OIL OR GAS*.—

19               (A) *IN GENERAL*.—The term “independent  
 20       producer of oil or gas” means any person that  
 21       produces oil or gas other than a person to whom  
 22       subsection (c) of section 613A of the Internal  
 23       Revenue Code of 1986 does not apply by reason  
 24       of paragraph (2) (relating to certain retailers) or

1 paragraph (4) (relating to certain refiners) of  
2 section 613A(d) of such Code.

3 (B) RULES FOR APPLYING PARAGRAPHS (2)  
4 AND (4) OF SECTION 613A(d).—For purposes of  
5 subparagraph (A), paragraphs (2) and (4) of  
6 section 613A(d) of the Internal Revenue Code of  
7 1986 shall be applied by substituting “calendar  
8 year” for “taxable year” each place it appears in  
9 such paragraphs.

10 (3) PROGRAM CONSORTIUM.—The term “pro-  
11 gram consortium” means the consortium selected  
12 under section 942(d).

13 (4) REMOTE OR INCONSEQUENTIAL.—The term  
14 “remote or inconsequential” has the meaning given  
15 that term in regulations issued by the Office of Gov-  
16 ernment Ethics under section 208(b)(2) of title 18,  
17 United States Code.

18 (5) SMALL PRODUCER.—The term “small pro-  
19 ducer” means an entity organized under the laws of  
20 the United States with production levels of less than  
21 1,000 barrels per day of oil equivalent.

22 (6) ULTRA-DEEPWATER.—The term “ultra-deep-  
23 water” means a water depth that is equal to or great-  
24 er than 1,500 meters.

1           (7) *ULTRA-DEEPWATER ARCHITECTURE.*—*The*  
 2           *term “ultra-deepwater architecture” means the inte-*  
 3           *gration of technologies for the exploration for, or pro-*  
 4           *duction of, natural gas or other petroleum resources*  
 5           *located at ultra-deepwater depths.*

6           (8) *ULTRA-DEEPWATER TECHNOLOGY.*—*The term*  
 7           *“ultra-deepwater technology” means a discrete tech-*  
 8           *nology that is specially suited to address 1 or more*  
 9           *challenges associated with the exploration for, or pro-*  
 10          *duction of, natural gas or other petroleum resources*  
 11          *located at ultra-deepwater depths.*

12          (9) *UNCONVENTIONAL NATURAL GAS AND OTHER*  
 13          *PETROLEUM RESOURCE.*—*The term “unconventional*  
 14          *natural gas and other petroleum resource” means nat-*  
 15          *ural gas and other petroleum resource located onshore*  
 16          *in an economically inaccessible geological formation,*  
 17          *including resources of small producers.*

18 **§949. Funding**

19          (a) *IN GENERAL.*—

20               (1) *OIL AND GAS LEASE INCOME.*—*For each of*  
 21               *fiscal years 2005 through 2014, from any Federal*  
 22               *royalties, rents, and bonuses derived from Federal on-*  
 23               *shore and offshore oil and gas leases issued under the*  
 24               *Outer Continental Shelf Lands Act and the Mineral*  
 25               *Leasing Act which are deposited in the Treasury, and*



1       *after distribution of any such funds as described in*  
2       *subsection (c), \$50,000,000 shall be deposited into the*  
3       *Ultra-Deepwater and Unconventional Natural Gas*  
4       *and Other Petroleum Research Fund (in this section*  
5       *referred to as the Fund). For purposes of this section,*  
6       *the term “royalties” excludes proceeds from the sale of*  
7       *royalty production taken in kind and royalty produc-*  
8       *tion that is transferred under section 27(a)(3) of the*  
9       *Outer Continental Shelf Lands Act (43 U.S.C.*  
10      *1353(a)(3)).*

11           (2) *AUTHORIZATION OF APPROPRIATIONS.—In*  
12       *addition to amounts described in paragraph (1), there*  
13       *are authorized to be appropriated to the Secretary, to*  
14       *be deposited in the Fund, \$150,000,000 for each of the*  
15       *fiscal years 2005 through 2014, to remain available*  
16       *until expended.*

17           (b) *OBLIGATIONAL AUTHORITY.—Monies in the Fund*  
18       *shall be available to the Secretary for obligation under this*  
19       *part without fiscal year limitation, to remain available*  
20       *until expended.*

21           (c) *PRIOR DISTRIBUTIONS.—The distributions de-*  
22       *scribed in subsection (a) are those required by law—*

23               (1) *to States and to the Reclamation Fund under*  
24       *the Mineral Leasing Act (30 U.S.C. 191(a)); and*

1           (2) *to other funds receiving monies from Federal*  
2     *oil and gas leasing programs, including—*

3                 (A) *any recipients pursuant to section 8(g)*  
4     *of the Outer Continental Shelf Lands Act (43*  
5     *U.S.C. 1337(g));*

6                 (B) *the Land and Water Conservation*  
7     *Fund, pursuant to section 2(c) of the Land and*  
8     *Water Conservation Fund Act of 1965 (16*  
9     *U.S.C. 4601–5(c));*

10                (C) *the Historic Preservation Fund, pursu-*  
11     *ant to section 108 of the National Historic Pres-*  
12     *ervation Act (16 U.S.C. 470h); and*

13                (D) *the Secure Energy Reinvestment Fund.*

14     (d) *ALLOCATION.—Amounts obligated from the Fund*  
15     *under this section in each fiscal year shall be allocated as*  
16     *follows:*

17                (1) *50 percent shall be for activities under sec-*  
18     *tion 942.*

19                (2) *35 percent shall be for activities under sec-*  
20     *tion 943(d)(1).*

21                (3) *10 percent shall be for activities under sec-*  
22     *tion 943(d)(2).*

23                (4) *5 percent shall be for research under section*  
24     *941(d).*

1       (e) *FUND.*—*There is hereby established in the Treasury*  
 2 *of the United States a separate fund to be known as the*  
 3 *“Ultra-Deepwater and Unconventional Natural Gas and*  
 4 *Other Petroleum Research Fund”.*

5                   ***Subtitle F—Energy Sciences***

6   ***§953. Plan for Fusion Energy Sciences Program***

7       (a) *DECLARATION OF POLICY.*—*It shall be the policy*  
 8 *of the United States to conduct a program of activities to*  
 9 *ensure that the United States is competitive with other na-*  
 10 *tions in providing fusion energy for its own needs and the*  
 11 *needs of other nations.*

12       (b) *PLANNING.*—

13               (1) *IN GENERAL.*—*Not later than 180 days after*  
 14 *the date of enactment of this Act, the Secretary shall*  
 15 *present to Congress a plan, with proposed cost esti-*  
 16 *mates, budgets, and potential international partners,*  
 17 *for the implementation of the policy described in sub-*  
 18 *section (a).*

19               (2) *COSTS AND SCHEDULES.*—*Such plan shall*  
 20 *also address the status of and, to the degree possible,*  
 21 *costs and schedules for—*

22                       (A) *the design and implementation of inter-*  
 23 *national or national facilities for the testing of*  
 24 *fusion materials; and*

1                   (B) the design and implementation of inter-  
 2                   national or national facilities for the testing and  
 3                   development of key fusion technologies.

4 **§954. Spallation Neutron Source**

5           (a) *DEFINITION.*—For the purposes of this section, the  
 6 term “Spallation Neutron Source” means Department  
 7 Project 99–E–334, Oak Ridge National Laboratory, Oak  
 8 Ridge, Tennessee.

9           (b) *REPORT.*—The Secretary shall report on the Spall-  
 10 ation Neutron Source as part of the Department’s annual  
 11 budget submission, including a description of the achieve-  
 12 ment of milestones, a comparison of actual costs to esti-  
 13 mated costs, and any changes in estimated project costs or  
 14 schedule.

15           (c) *LIMITATIONS.*—The total amount obligated by the  
 16 Department, including prior year appropriations, for the  
 17 Spallation Neutron Source shall not exceed—

- 18                   (1) \$1,192,700,000 for costs of construction;
- 19                   (2) \$219,000,000 for other project costs; and
- 20                   (3) \$1,411,700,000 for total project cost.

21 **§962. Nitrogen fixation**

22           The Secretary shall conduct studies on biological nitro-  
 23 gen fixation, including plant genomics research relevant to  
 24 the development of commercial crop varieties with enhanced  
 25 nitrogen fixation efficiency and ability.

1                   **Subtitle G—Energy and Environment**

2   **§ 966. Waste reduction and use of alternatives**

3           (a) *GRANT AUTHORITY.*—*The Secretary may make a*  
4 *single grant to a qualified institution to examine burning*  
5 *post-consumer carpet in cement kilns as an alternative en-*  
6 *ergy source. The purposes of the grant shall include deter-*  
7 *mining—*

8                   (1) *how post-consumer carpet can be burned*  
9 *without disrupting kiln operations;*

10                  (2) *the extent to which overall kiln emissions*  
11 *may be reduced;*

12                  (3) *the emissions of air pollutants and other rel-*  
13 *evant environmental impacts; and*

14                  (4) *how this process provides benefits to both ce-*  
15 *ment kiln operations and carpet suppliers.*

16       (b) *QUALIFIED INSTITUTION.*—*For the purposes of*  
17 *subsection (a), a qualified institution is an institution of*  
18 *higher education with demonstrated expertise in the fields*  
19 *of fiber recycling and logistical modeling of carpet waste*  
20 *collection and preparation.*

21       (c) *AUTHORIZATION OF APPROPRIATIONS.*—*There are*  
22 *authorized to be appropriated to the Secretary for carrying*  
23 *out this section \$500,000.*

24   **§ 967. Report on fuel cell test center**

25       (a) *REPORT.*—*Not later than 1 year after the date of*  
26 *enactment of this Act, the Secretary shall transmit to Con-*

1 gress a report on the results of a study of the establishment  
 2 of a test center for next-generation fuel cells at an institu-  
 3 tion of higher education that has available a continuous  
 4 source of hydrogen and access to the electric transmission  
 5 grid. Such report shall include a conceptual design for such  
 6 test center and a projection of the costs of establishing the  
 7 test center.

8 (b) *AUTHORIZATION OF APPROPRIATIONS.*—There are  
 9 authorized to be appropriated to the Secretary for carrying  
 10 out this section \$500,000.

11 **§968. Arctic Engineering Research Center**

12 (a) *IN GENERAL.*—The Secretary of Energy (referred  
 13 to in this section as the “Secretary”) in consultation with  
 14 the Secretary of Transportation and the United States Arc-  
 15 tic Research Commission shall provide annual grants to a  
 16 university located adjacent to the Arctic Energy Office of  
 17 the Department of Energy, to establish and operate a uni-  
 18 versity research center to be headquartered in Fairbanks  
 19 and to be known as the “Arctic Engineering Research Cen-  
 20 ter” (referred to in this section as the “Center”).

21 (b) *PURPOSE.*—The purpose of the Center shall be to  
 22 conduct research on, and develop improved methods of, con-  
 23 struction and use of materials to improve the overall per-  
 24 formance of roads, bridges, residential, commercial, and in-

1 *dustrial structures, and other infrastructure in the Arctic*  
2 *region, with an emphasis on developing—*

3 *(1) new construction techniques for roads,*  
4 *bridges, rail, and related transportation infrastruc-*  
5 *ture and residential, commercial, and industrial in-*  
6 *frastructure that are capable of withstanding the Arc-*  
7 *tic environment and using limited energy resources as*  
8 *efficiently as possible;*

9 *(2) technologies and procedures for increasing*  
10 *road, bridge, rail, and related transportation infra-*  
11 *structure and residential, commercial, and industrial*  
12 *infrastructure safety, reliability, and integrity in the*  
13 *Arctic region;*

14 *(3) new materials and improving the perform-*  
15 *ance and energy efficiency of existing materials for*  
16 *the construction of roads, bridges, rail, and related*  
17 *transportation infrastructure and residential, com-*  
18 *mercial, and industrial infrastructure in the Arctic*  
19 *region; and*

20 *(4) recommendations for new local, regional, and*  
21 *State permitting and building codes to ensure trans-*  
22 *portation and building safety and efficient energy use*  
23 *when constructing, using, and occupying such infra-*  
24 *structure in the Arctic region.*

25 *(c) OBJECTIVES.—The Center shall carry out—*

1           (1) *basic and applied research in the subjects de-*  
 2           *scribed in subsection (b), the products of which shall*  
 3           *be judged by peers or other experts in the field to ad-*  
 4           *vance the body of knowledge in road, bridge, rail, and*  
 5           *infrastructure engineering in the Arctic region; and*

6           (2) *an ongoing program of technology transfer*  
 7           *that makes research results available to potential*  
 8           *users in a form that can be implemented.*

9           (d) *AMOUNT OF GRANT.*—*For each of fiscal years 2005*  
 10          *through 2010, the Secretary shall provide a grant in the*  
 11          *amount of \$3,000,000 to the institution specified in sub-*  
 12          *section (a) to carry out this section.*

13          (e) *AUTHORIZATION OF APPROPRIATIONS.*—*There are*  
 14          *authorized to be appropriated to carry out this section*  
 15          *\$3,000,000 for each of fiscal years 2005 through 2010.*

16          **§970. Western Michigan demonstration project**

17          *The Administrator of the Environmental Protection*  
 18          *Agency, in consultation with the State of Michigan and af-*  
 19          *fectected local officials, shall conduct a demonstration project*  
 20          *to address the effect of transported ozone and ozone precur-*  
 21          *sors in Southwestern Michigan. The demonstration pro-*  
 22          *gram shall address projected nonattainment areas in South-*  
 23          *western Michigan that include counties with design values*  
 24          *for ozone of less than .095 based on years 2000 to 2002*  
 25          *or the most current 3-year period of air quality data. The*



1 Administrator shall assess any difficulties such areas may  
2 experience in meeting the 8 hour national ambient air qual-  
3 ity standard for ozone due to the effect of transported ozone  
4 or ozone precursors into the areas. The Administrator shall  
5 work with State and local officials to determine the extent  
6 of ozone and ozone precursor transport, to assess alter-  
7 natives to achieve compliance with the 8 hour standard  
8 apart from local controls, and to determine the timeframe  
9 in which such compliance could take place. The Adminis-  
10 trator shall complete this demonstration project no later  
11 than 2 years after the date of enactment of this section and  
12 shall not impose any requirement or sanction that might  
13 otherwise apply during the pendency of the demonstration  
14 project.

15 **§971. Low-cost hydrogen propulsion and infrastruc-**  
16 **ture**

17 (a) PROGRAM.—The Secretary of Energy shall—

18 (1) establish a program with respect to the feasi-  
19 bility of using hydrogen propulsion in light-weight  
20 vehicles and the integration of the associated hydrogen  
21 production infrastructure using off-the-shelf compo-  
22 nents; and

23 (2) identify universities and institutions that—

1           (A) have expertise in operating and testing  
2           vehicles fueled by hydrogen, methane, and other  
3           fuels;

4           (B) have expertise in integrating off-the-  
5           shelf components to minimize cost; and

6           (C) within two years can test a vehicle  
7           based on an existing commercially available  
8           platform with a curb weight of not less than  
9           2,000 pounds before modifications, that—

10                   (i) operates solely on hydrogen gas;

11                   (ii) can travel a minimum of 300  
12                   miles under normal road conditions; and

13                   (iii) uses hydrogen produced from  
14                   water using only solar energy.

15       (b) *AUTHORIZATION OF APPROPRIATIONS.*—There are  
16       authorized to be appropriated to the Secretary of Energy  
17       for carrying out this section \$200,000 for fiscal year 2006.  
18       Such sums shall remain available until expended.

19       **§972. Carbon-based fuel cell development**

20       (a) *GRANT AUTHORITY.*—The Secretary of Energy is  
21       authorized to make a single grant to a qualified institution  
22       to design and fabricate a 5-kilowatt prototype coal-based  
23       fuel cell with the following performance objectives:

24                   (1) A current density of 600 milliamps per  
25                   square centimeter at a cell voltage of 0.8 volts.

1           (2) *An operating temperature range not to ex-*  
 2           *ceed 900 degrees celsius.*

3           (b) *QUALIFIED INSTITUTION.*—*For the purposes of*  
 4           *subsection (a), a qualified institution is a research-intensive*  
 5           *institution of higher education with demonstrated expertise*  
 6           *in the development of carbon-based fuel cells allowing the*  
 7           *direct use of high sulfur content coal as fuel, and which*  
 8           *has produced a laboratory-scale carbon-based fuel cell with*  
 9           *a proven current density of 100 milliamps per square centi-*  
 10          *meter at a voltage of 0.6 volts.*

11          (c) *AUTHORIZATION OF APPROPRIATIONS.*—*There are*  
 12          *authorized to be appropriated to the Secretary of Energy*  
 13          *for carrying out this section \$850,000 for fiscal year 2006.*

14                   ***Subtitle H—International Cooperation***

15          ***§981. United States-Israel cooperation***

16          (a) *FINDINGS.*—*The Congress finds that—*

17               (1) *on February 1, 1996, United States Sec-*  
 18               *retary of Energy Hazel R. O’Leary and Israeli Min-*  
 19               *ister of Energy and Infrastructure Gonen Segev*  
 20               *signed the Agreement between the Department of En-*  
 21               *ergy of the United States of America and the Min-*  
 22               *istry of Energy and Infrastructure of Israel Con-*  
 23               *cerning Energy Cooperation, to establish a framework*  
 24               *for collaboration between the United States and Israel*  
 25               *in energy research and development activities;*

1           (2) *the Agreement entered into force in February*  
2     *2000;*

3           (3) *in February 2005, the Agreement was auto-*  
4     *matically renewed for one additional 5-year period*  
5     *pursuant to Article X of the Agreement; and*

6           (4) *under the Agreement, the United States and*  
7     *Israel may cooperate in energy research and develop-*  
8     *ment in a variety of alternative and advanced energy*  
9     *sectors.*

10        (b) *REPORT TO CONGRESS.—(1) The Secretary of En-*  
11     *ergy shall report to the Committee on Energy and Com-*  
12     *merce of the House of Representatives and the Committee*  
13     *on Energy and Natural Resources of the Senate on—*

14           (A) *how the United States and Israel have co-*  
15     *operated on energy research and development activi-*  
16     *ties under the Agreement;*

17           (B) *projects initiated pursuant to the Agreement;*  
18     *and*

19           (C) *plans for future cooperation and joint*  
20     *projects under the Agreement.*

21        (2) *The report shall be submitted no later than three*  
22     *months after the date of enactment of this Act.*

23        (c) *SENSE OF CONGRESS.—It is the sense of the Con-*  
24     *gress that energy cooperation between the Governments of*

1 *the United States and Israel is mutually beneficial in the*  
 2 *development of energy technology.*

3       ***TITLE X—DEPARTMENT OF***  
 4       ***ENERGY MANAGEMENT***

5       ***§ 1001. Additional Assistant Secretary position***

6       *(a) ADDITIONAL ASSISTANT SECRETARY POSITION TO*  
 7 *ENABLE IMPROVED MANAGEMENT OF NUCLEAR ENERGY*  
 8 *ISSUES.—*

9               *(1) IN GENERAL.—Section 203(a) of the Depart-*  
 10 *ment of Energy Organization Act (42 U.S.C.*  
 11 *7133(a)) is amended by striking “six Assistant Secre-*  
 12 *taries” and inserting “7 Assistant Secretaries”.*

13              *(2) SENSE OF CONGRESS.—It is the sense of*  
 14 *Congress that the leadership for departmental mis-*  
 15 *sions in nuclear energy should be at the Assistant*  
 16 *Secretary level.*

17       *(b) TECHNICAL AND CONFORMING AMENDMENTS.—*

18              *(1) TITLE 5.—Section 5315 of title 5, United*  
 19 *States Code, is amended by striking “Assistant Secre-*  
 20 *taries of Energy (6)” and inserting “Assistant Secre-*  
 21 *taries of Energy (7)”.*

22              *(2) DEPARTMENT OF ENERGY ORGANIZATION*  
 23 *ACT.—The table of contents for the Department of En-*  
 24 *ergy Organization Act (42 U.S.C. 7101 note) is*  
 25 *amended—*

1                   (A) by striking “Section 209” and inserting  
2                   “Sec. 209”;

3                   (B) by striking “213.” and inserting “Sec.  
4                   213.”;

5                   (C) by striking “214.” and inserting “Sec.  
6                   214.”;

7                   (D) by striking “215.” and inserting “Sec.  
8                   215.”; and

9                   (E) by striking “216.” and inserting “Sec.  
10                  216.”.

11   **§ 1002. Other transactions authority**

12           Section 646 of the Department of Energy Organization  
13 Act (42 U.S.C. 7256) is amended by adding at the end the  
14 following:

15           “(g)(1) In addition to other authorities granted to the  
16 Secretary under law, the Secretary may enter into other  
17 transactions on such terms as the Secretary may deem ap-  
18 propriate in furtherance of research, development, or dem-  
19 onstration functions vested in the Secretary. Such other  
20 transactions shall not be subject to the provisions of section  
21 9 of the Federal Nonnuclear Energy Research and Develop-  
22 ment Act of 1974 (42 U.S.C. 5908) or section 152 of the  
23 Atomic Energy Act of 1954 (42 U.S.C. 2182).

24           “(2)(A) The Secretary shall ensure that—

1           “(i) to the maximum extent the Secretary deter-  
2           mines practicable, no transaction entered into under  
3           paragraph (1) provides for research, development, or  
4           demonstration that duplicates research, development,  
5           or demonstration being conducted under existing  
6           projects carried out by the Department;

7           “(ii) to the extent the Secretary determines prac-  
8           ticable, the funds provided by the Government under  
9           a transaction authorized by paragraph (1) do not ex-  
10          ceed the total amount provided by other parties to the  
11          transaction; and

12          “(iii) to the extent the Secretary determines  
13          practicable, competitive, merit-based selection proce-  
14          dures shall be used when entering into transactions  
15          under paragraph (1).

16          “(B) A transaction authorized by paragraph (1) may  
17          be used for a research, development, or demonstration  
18          project only if the Secretary makes a written determination  
19          that the use of a standard contract, grant, or cooperative  
20          agreement for the project is not feasible or appropriate.

21          “(3)(A) The Secretary shall protect from disclosure, in-  
22          cluding disclosure under section 552 of title 5, United  
23          States Code, for up to 5 years after the date the information  
24          is received by the Secretary—

1           “(i) a proposal, proposal abstract, and sup-  
2           porting documents submitted to the Department in a  
3           competitive or noncompetitive process having the po-  
4           tential for resulting in an award under paragraph  
5           (1) to the party submitting the information; and

6           “(ii) a business plan and technical information  
7           relating to a transaction authorized by paragraph (1)  
8           submitted to the Department as confidential business  
9           information.

10          “(B) The Secretary may protect from disclosure, for  
11          up to 5 years after the information was developed, any in-  
12          formation developed pursuant to a transaction under para-  
13          graph (1) which developed information is of a character  
14          that it would be protected from disclosure under section  
15          552(b)(4) of title 5, United States Code, if obtained from  
16          a person other than a Federal agency.

17          “(4) Not later than 90 days after the date of enactment  
18          of this subsection, the Secretary shall prescribe guidelines  
19          for using other transactions authorized by paragraph (1).  
20          Such guidelines shall be published in the Federal Register  
21          for public comment under rulemaking procedures of the De-  
22          partment.

23          “(5) The authority of the Secretary under this sub-  
24          section may be delegated only to an officer of the Depart-  
25          ment who is appointed by the President by and with the



1 *advice and consent of the Senate and may not be delegated*  
2 *to any other person.*

3 “(6)(A) *Not later than September 31, 2006, the Comp-*  
4 *troller General of the United States shall report to Congress*  
5 *on the Department’s use of the authorities granted under*  
6 *this section, including the ability to attract nontraditional*  
7 *government contractors and whether additional safeguards*  
8 *are needed with respect to the use of such authorities.*

9 “(B) *In this section, the term ‘nontraditional Govern-*  
10 *ment contractor’ has the same meaning as the term ‘non-*  
11 *traditional defense contractor’ as defined in section 845(e)*  
12 *of the National Defense Authorization Act for Fiscal Year*  
13 *1994 (Public Law 103–160; 10 U.S.C. 2371 note).’.*

14 **§ 1003. University collaboration**

15 *Not later than 2 years after the date of enactment of*  
16 *this Act, the Secretary of Energy shall transmit to the Con-*  
17 *gress a report that examines the feasibility of promoting*  
18 *collaborations between major universities and other colleges*  
19 *and universities in grants, contracts, and cooperative agree-*  
20 *ments made by the Secretary for energy projects. For pur-*  
21 *poses of this section, major universities are schools listed*  
22 *by the Carnegie Foundation as Doctoral Research Extensive*  
23 *Universities. The Secretary shall also consider providing*  
24 *incentives to increase the inclusion of small institutions of*

1 *higher education, including minority-serving institutions,*  
 2 *in energy grants, contracts, and cooperative agreements.*

3 **§ 1004. Sense of Congress**

4 *It is the sense of the Congress that—*

5 *(1) the Secretary of Energy should develop and*  
 6 *implement more stringent procurement and inventory*  
 7 *controls, including controls on the purchase card pro-*  
 8 *gram, to prevent waste, fraud, and abuse of taxpayer*  
 9 *funds by employees and contractors of the Department*  
 10 *of Energy; and*

11 *(2) the Department’s Inspector General should*  
 12 *continue to closely review purchase card purchases*  
 13 *and other procurement and inventory practices at the*  
 14 *Department.*

15 **TITLE XII—ELECTRICITY**

16 **§ 1201. Short title**

17 *This title may be cited as the “Electric Reliability Act*  
 18 *of 2005”.*

19 **Subtitle A—Reliability Standards**

20 **§ 1211. Electric reliability standards**

21 *(a) IN GENERAL.—Part II of the Federal Power Act*  
 22 *(16 U.S.C 824 et seq.) is amended by adding at the end*  
 23 *the following:*

24 **“SEC. 215. ELECTRIC RELIABILITY.**

25 *“(a) DEFINITIONS.—For purposes of this section:*

1           “(1) The term ‘bulk-power system’ means—

2                   “(A) facilities and control systems necessary  
3           for operating an interconnected electric energy  
4           transmission network (or any portion thereof);  
5           and

6                   “(B) electric energy from generation facili-  
7           ties needed to maintain transmission system re-  
8           liability.

9           The term does not include facilities used in the local  
10          distribution of electric energy.

11           “(2) The terms ‘Electric Reliability Organiza-  
12          tion’ and ‘ERO’ mean the organization certified by  
13          the Commission under subsection (c) the purpose of  
14          which is to establish and enforce reliability standards  
15          for the bulk-power system, subject to Commission re-  
16          view.

17           “(3) The term ‘reliability standard’ means a re-  
18          quirement, approved by the Commission under this  
19          section, to provide for reliable operation of the bulk-  
20          power system. The term includes requirements for the  
21          operation of existing bulk-power system facilities, in-  
22          cluding cybersecurity protection, and the design of  
23          planned additions or modifications to such facilities  
24          to the extent necessary to provide for reliable oper-  
25          ation of the bulk-power system, but the term does not

1        *include any requirement to enlarge such facilities or*  
2        *to construct new transmission capacity or generation*  
3        *capacity.*

4            *“(4) The term ‘reliable operation’ means oper-*  
5        *ating the elements of the bulk-power system within*  
6        *equipment and electric system thermal, voltage, and*  
7        *stability limits so that instability, uncontrolled sepa-*  
8        *ration, or cascading failures of such system will not*  
9        *occur as a result of a sudden disturbance, including*  
10       *a cybersecurity incident, or unanticipated failure of*  
11       *system elements.*

12           *“(5) The term ‘Interconnection’ means a geo-*  
13        *graphic area in which the operation of bulk-power*  
14        *system components is synchronized such that the fail-*  
15        *ure of 1 or more of such components may adversely*  
16        *affect the ability of the operators of other components*  
17        *within the system to maintain reliable operation of*  
18        *the facilities within their control.*

19           *“(6) The term ‘transmission organization’ means*  
20        *a Regional Transmission Organization, Independent*  
21        *System Operator, independent transmission provider,*  
22        *or other transmission organization finally approved*  
23        *by the Commission for the operation of transmission*  
24        *facilities.*

1           “(7) *The term ‘regional entity’ means an entity*  
2           *having enforcement authority pursuant to subsection*  
3           *(e)(4).*

4           “(8) *The term ‘cybersecurity incident’ means a*  
5           *malicious act or suspicious event that disrupts, or*  
6           *was an attempt to disrupt, the operation of those pro-*  
7           *grammable electronic devices and communication net-*  
8           *works including hardware, software and data that are*  
9           *essential to the reliable operation of the bulk power*  
10          *system.*

11          “(b) *JURISDICTION AND APPLICABILITY.—(1) The*  
12          *Commission shall have jurisdiction, within the United*  
13          *States, over the ERO certified by the Commission under*  
14          *subsection (c), any regional entities, and all users, owners*  
15          *and operators of the bulk-power system, including but not*  
16          *limited to the entities described in section 201(f), for pur-*  
17          *poses of approving reliability standards established under*  
18          *this section and enforcing compliance with this section. All*  
19          *users, owners and operators of the bulk-power system shall*  
20          *comply with reliability standards that take effect under this*  
21          *section.*

22          “(2) *The Commission shall issue a final rule to imple-*  
23          *ment the requirements of this section not later than 180*  
24          *days after the date of enactment of this section.*

1       “(c) *CERTIFICATION.*—*Following the issuance of a*  
2 *Commission rule under subsection (b)(2), any person may*  
3 *submit an application to the Commission for certification*  
4 *as the Electric Reliability Organization. The Commission*  
5 *may certify 1 such ERO if the Commission determines that*  
6 *such ERO—*

7               “(1) *has the ability to develop and enforce, sub-*  
8 *ject to subsection (e)(2), reliability standards that*  
9 *provide for an adequate level of reliability of the bulk-*  
10 *power system; and*

11              “(2) *has established rules that—*

12                      “(A) *assure its independence of the users*  
13 *and owners and operators of the bulk-power sys-*  
14 *tem, while assuring fair stakeholder representa-*  
15 *tion in the selection of its directors and balanced*  
16 *decisionmaking in any ERO committee or subor-*  
17 *dinate organizational structure;*

18                      “(B) *allocate equitably reasonable dues, fees,*  
19 *and other charges among end users for all activi-*  
20 *ties under this section;*

21                      “(C) *provide fair and impartial procedures*  
22 *for enforcement of reliability standards through*  
23 *the imposition of penalties in accordance with*  
24 *subsection (e) (including limitations on activi-*

1           *ties, functions, or operations, or other appro-*  
2           *priate sanctions);*

3           “(D) *provide for reasonable notice and op-*  
4           *portunity for public comment, due process, open-*  
5           *ness, and balance of interests in developing reli-*  
6           *ability standards and otherwise exercising its*  
7           *duties; and*

8           “(E) *provide for taking, after certification,*  
9           *appropriate steps to gain recognition in Canada*  
10          *and Mexico.*

11          *The total amount of all dues, fees, and other charges*  
12          *collected by the ERO in each of the fiscal years 2006*  
13          *through 2015 and allocated under subparagraph (B)*  
14          *shall not exceed \$50,000,000.*

15          “(d) *RELIABILITY STANDARDS.—(1) The Electric Reli-*  
16          *ability Organization shall file each reliability standard or*  
17          *modification to a reliability standard that it proposes to*  
18          *be made effective under this section with the Commission.*

19          “(2) *The Commission may approve, by rule or order,*  
20          *a proposed reliability standard or modification to a reli-*  
21          *ability standard if it determines that the standard is just,*  
22          *reasonable, not unduly discriminatory or preferential, and*  
23          *in the public interest. The Commission shall give due weight*  
24          *to the technical expertise of the Electric Reliability Organi-*  
25          *zation with respect to the content of a proposed standard*

1 *or modification to a reliability standard and to the tech-*  
2 *nical expertise of a regional entity organized on an Inter-*  
3 *connection-wide basis with respect to a reliability standard*  
4 *to be applicable within that Interconnection, but shall not*  
5 *defer with respect to the effect of a standard on competition.*  
6 *A proposed standard or modification shall take effect upon*  
7 *approval by the Commission.*

8       “(3) *The Electric Reliability Organization shall*  
9 *rebuttably presume that a proposal from a regional entity*  
10 *organized on an Interconnection-wide basis for a reliability*  
11 *standard or modification to a reliability standard to be ap-*  
12 *plicable on an Interconnection-wide basis is just, reason-*  
13 *able, and not unduly discriminatory or preferential, and*  
14 *in the public interest.*

15       “(4) *The Commission shall remand to the Electric Re-*  
16 *liability Organization for further consideration a proposed*  
17 *reliability standard or a modification to a reliability stand-*  
18 *ard that the Commission disapproves in whole or in part.*

19       “(5) *The Commission, upon its own motion or upon*  
20 *complaint, may order the Electric Reliability Organization*  
21 *to submit to the Commission a proposed reliability stand-*  
22 *ard or a modification to a reliability standard that address-*  
23 *es a specific matter if the Commission considers such a new*  
24 *or modified reliability standard appropriate to carry out*  
25 *this section.*



1       “(6) *The final rule adopted under subsection (b)(2)*  
 2 *shall include fair processes for the identification and timely*  
 3 *resolution of any conflict between a reliability standard and*  
 4 *any function, rule, order, tariff, rate schedule, or agreement*  
 5 *accepted, approved, or ordered by the Commission applica-*  
 6 *ble to a transmission organization. Such transmission orga-*  
 7 *nization shall continue to comply with such function, rule,*  
 8 *order, tariff, rate schedule or agreement accepted approved,*  
 9 *or ordered by the Commission until—*

10           “(A) *the Commission finds a conflict exists be-*  
 11 *tween a reliability standard and any such provision;*

12           “(B) *the Commission orders a change to such*  
 13 *provision pursuant to section 206 of this part; and*

14           “(C) *the ordered change becomes effective under*  
 15 *this part.*

16 *If the Commission determines that a reliability standard*  
 17 *needs to be changed as a result of such a conflict, it shall*  
 18 *order the ERO to develop and file with the Commission a*  
 19 *modified reliability standard under paragraph (4) or (5)*  
 20 *of this subsection.*

21       “(e) *ENFORCEMENT.—(1) The ERO may impose, sub-*  
 22 *ject to paragraph (2), a penalty on a user or owner or oper-*  
 23 *ator of the bulk-power system for a violation of a reliability*  
 24 *standard approved by the Commission under subsection (d)*  
 25 *if the ERO, after notice and an opportunity for a hearing—*

1           “(A) finds that the user or owner or operator has  
2           violated a reliability standard approved by the Com-  
3           mission under subsection (d); and

4           “(B) files notice and the record of the proceeding  
5           with the Commission.

6           “(2) A penalty imposed under paragraph (1) may take  
7           effect not earlier than the 31st day after the ERO files with  
8           the Commission notice of the penalty and the record of pro-  
9           ceedings. Such penalty shall be subject to review by the  
10          Commission, on its own motion or upon application by the  
11          user, owner or operator that is the subject of the penalty  
12          filed within 30 days after the date such notice is filed with  
13          the Commission. Application to the Commission for review,  
14          or the initiation of review by the Commission on its own  
15          motion, shall not operate as a stay of such penalty unless  
16          the Commission otherwise orders upon its own motion or  
17          upon application by the user, owner or operator that is the  
18          subject of such penalty. In any proceeding to review a pen-  
19          alty imposed under paragraph (1), the Commission, after  
20          notice and opportunity for hearing (which hearing may  
21          consist solely of the record before the ERO and opportunity  
22          for the presentation of supporting reasons to affirm, modify,  
23          or set aside the penalty), shall by order affirm, set aside,  
24          reinstate, or modify the penalty, and, if appropriate, re-

1 *mand to the ERO for further proceedings. The Commission*  
2 *shall implement expedited procedures for such hearings.*

3       “(3) *On its own motion or upon complaint, the Com-*  
4 *mission may order compliance with a reliability standard*  
5 *and may impose a penalty against a user or owner or oper-*  
6 *ator of the bulk-power system if the Commission finds, after*  
7 *notice and opportunity for a hearing, that the user or owner*  
8 *or operator of the bulk-power system has engaged or is about*  
9 *to engage in any acts or practices that constitute or will*  
10 *constitute a violation of a reliability standard.*

11       “(4) *The Commission shall issue regulations author-*  
12 *izing the ERO to enter into an agreement to delegate au-*  
13 *thority to a regional entity for the purpose of proposing*  
14 *reliability standards to the ERO and enforcing reliability*  
15 *standards under paragraph (1) if—*

16               “(A) *the regional entity is governed by—*

17                       “(i) *an independent board;*

18                       “(ii) *a balanced stakeholder board; or*

19                       “(iii) *a combination independent and bal-*  
20 *anced stakeholder board.*

21               “(B) *the regional entity otherwise satisfies the*  
22 *provisions of subsection (c)(1) and (2); and*

23               “(C) *the agreement promotes effective and effi-*  
24 *cient administration of bulk-power system reliability.*

1 *The Commission may modify such delegation. The ERO*  
 2 *and the Commission shall rebuttably presume that a pro-*  
 3 *posal for delegation to a regional entity organized on an*  
 4 *Interconnection-wide basis promotes effective and efficient*  
 5 *administration of bulk-power system reliability and should*  
 6 *be approved. Such regulation may provide that the Com-*  
 7 *mission may assign the ERO's authority to enforce reli-*  
 8 *ability standards under paragraph (1) directly to a re-*  
 9 *gional entity consistent with the requirements of this para-*  
 10 *graph.*

11       “(5) *The Commission may take such action as is nec-*  
 12 *essary or appropriate against the ERO or a regional entity*  
 13 *to ensure compliance with a reliability standard or any*  
 14 *Commission order affecting the ERO or a regional entity.*

15       “(6) *Any penalty imposed under this section shall bear*  
 16 *a reasonable relation to the seriousness of the violation and*  
 17 *shall take into consideration the efforts of such user, owner,*  
 18 *or operator to remedy the violation in a timely manner.*

19       “(f) *CHANGES IN ELECTRIC RELIABILITY ORGANIZA-*  
 20 *TION RULES.—The Electric Reliability Organization shall*  
 21 *file with the Commission for approval any proposed rule*  
 22 *or proposed rule change, accompanied by an explanation*  
 23 *of its basis and purpose. The Commission, upon its own*  
 24 *motion or complaint, may propose a change to the rules*  
 25 *of the ERO. A proposed rule or proposed rule change shall*

1 *take effect upon a finding by the Commission, after notice*  
2 *and opportunity for comment, that the change is just, rea-*  
3 *sonable, not unduly discriminatory or preferential, is in the*  
4 *public interest, and satisfies the requirements of subsection*  
5 *(c).*

6 “(g) *RELIABILITY REPORTS.*—*The ERO shall conduct*  
7 *periodic assessments of the reliability and adequacy of the*  
8 *bulk-power system in North America.*

9 “(h) *COORDINATION WITH CANADA AND MEXICO.*—  
10 *The President is urged to negotiate international agree-*  
11 *ments with the governments of Canada and Mexico to pro-*  
12 *vide for effective compliance with reliability standards and*  
13 *the effectiveness of the ERO in the United States and Can-*  
14 *ada or Mexico.*

15 “(i) *SAVINGS PROVISIONS.*—(1) *The ERO shall have*  
16 *authority to develop and enforce compliance with reliability*  
17 *standards for only the bulk-power system.*

18 “(2) *This section does not authorize the ERO or the*  
19 *Commission to order the construction of additional genera-*  
20 *tion or transmission capacity or to set and enforce compli-*  
21 *ance with standards for adequacy or safety of electric facili-*  
22 *ties or services.*

23 “(3) *Nothing in this section shall be construed to pre-*  
24 *empt any authority of any State to take action to ensure*  
25 *the safety, adequacy, and reliability of electric service with-*

1 *in that State, as long as such action is not inconsistent*  
2 *with any reliability standard, except that the State of New*  
3 *York may establish rules that result in greater reliability*  
4 *within that State, as long as such action does not result*  
5 *in lesser reliability outside the State than that provided by*  
6 *the reliability standards.*

7       “(4) *Within 90 days of the application of the Electric*  
8 *Reliability Organization or other affected party, and after*  
9 *notice and opportunity for comment, the Commission shall*  
10 *issue a final order determining whether a State action is*  
11 *inconsistent with a reliability standard, taking into consid-*  
12 *eration any recommendation of the ERO.*

13       “(5) *The Commission, after consultation with the ERO*  
14 *and the State taking action, may stay the effectiveness of*  
15 *any State action, pending the Commission’s issuance of a*  
16 *final order.*

17       “(j) *REGIONAL ADVISORY BODIES.—The Commission*  
18 *shall establish a regional advisory body on the petition of*  
19 *at least  $\frac{2}{3}$  of the States within a region that have more*  
20 *than  $\frac{1}{2}$  of their electric load served within the region. A*  
21 *regional advisory body shall be composed of 1 member from*  
22 *each participating State in the region, appointed by the*  
23 *Governor of each State, and may include representatives of*  
24 *agencies, States, and provinces outside the United States.*  
25 *A regional advisory body may provide advice to the Electric*

1 *Reliability Organization, a regional entity, or the Commis-*  
 2 *sion regarding the governance of an existing or proposed*  
 3 *regional entity within the same region, whether a standard*  
 4 *proposed to apply within the region is just, reasonable, not*  
 5 *unduly discriminatory or preferential, and in the public*  
 6 *interest, whether fees proposed to be assessed within the re-*  
 7 *gion are just, reasonable, not unduly discriminatory or*  
 8 *preferential, and in the public interest and any other re-*  
 9 *sponsibilities requested by the Commission. The Commis-*  
 10 *sion may give deference to the advice of any such regional*  
 11 *advisory body if that body is organized on an Interconnec-*  
 12 *tion-wide basis.*

13       “(k) *ALASKA AND HAWAII.*—*The provisions of this sec-*  
 14 *tion do not apply to Alaska or Hawaii.”.*

15       (b) *STATUS OF ERO.*—*The Electric Reliability Orga-*  
 16 *nization certified by the Federal Energy Regulatory Com-*  
 17 *mission under section 215(c) of the Federal Power Act and*  
 18 *any regional entity delegated enforcement authority pursu-*  
 19 *ant to section 215(e)(4) of that Act are not departments,*  
 20 *agencies, or instrumentalities of the United States Govern-*  
 21 *ment.*

22       (c) *LIMITATION ON ANNUAL APPROPRIATIONS.*—*There*  
 23 *is authorized to be appropriated not more than \$50,000,000*  
 24 *per year for fiscal years 2006 through 2015 for all activities*  
 25 *under the amendment made by subsection (a).*

**Subtitle B—Transmission Infrastructure**

**Modernization**

**§ 1221. Siting of interstate electric transmission facilities**

(a) AMENDMENT OF FEDERAL POWER ACT.—Part II of the Federal Power Act is amended by adding at the end the following:

**“SEC. 216. SITING OF INTERSTATE ELECTRIC TRANSMISSION FACILITIES.**

**“(a) DESIGNATION OF NATIONAL INTEREST ELECTRIC TRANSMISSION CORRIDORS.—**

**“(1) TRANSMISSION CONGESTION STUDY.—With-**  
*in 1 year after the enactment of this section, and every 3 years thereafter, the Secretary of Energy, in consultation with affected States, shall conduct a study of electric transmission congestion. After considering alternatives and recommendations from interested parties, including an opportunity for comment from affected States, the Secretary shall issue a report, based on such study, which may designate any geographic area experiencing electric energy transmission capacity constraints or congestion that adversely affects consumers as a national interest electric transmission corridor. The Secretary shall conduct the study and issue the report in consultation*



1       *with any appropriate regional entity referenced in*  
2       *section 215 of this Act.*

3               “(2) *CONSIDERATIONS.—In determining whether*  
4       *to designate a national interest electric transmission*  
5       *corridor referred to in paragraph (1) under this sec-*  
6       *tion, the Secretary may consider whether—*

7               “(A) *the economic vitality and development*  
8               *of the corridor, or the end markets served by the*  
9               *corridor, may be constrained by lack of adequate*  
10              *or reasonably priced electricity;*

11              “(B)(i) *economic growth in the corridor, or*  
12              *the end markets served by the corridor, may be*  
13              *jeopardized by reliance on limited sources of en-*  
14              *ergy; and*

15              “(ii) *a diversification of supply is war-*  
16              *ranted;*

17              “(C) *the energy independence of the United*  
18              *States would be served by the designation;*

19              “(D) *the designation would be in the inter-*  
20              *est of national energy policy; and*

21              “(E) *the designation would enhance na-*  
22              *tional defense and homeland security.*

23              “(b) *CONSTRUCTION PERMIT.—Except as provided in*  
24       *subsection (i), the Commission is authorized, after notice*  
25       *and an opportunity for hearing, to issue a permit or per-*

1 *mits for the construction or modification of electric trans-*  
2 *mission facilities in a national interest electric trans-*  
3 *mission corridor designated by the Secretary under sub-*  
4 *section (a) if the Commission finds that—*

5           “(1)(A) *a State in which the transmission facili-*  
6           *ties are to be constructed or modified is without au-*  
7           *thority to—*

8                     “(i) *approve the siting of the facilities; or*

9                     “(ii) *consider the interstate benefits expected*  
10           *to be achieved by the proposed construction or*  
11           *modification of transmission facilities in the*  
12           *State;*

13           “(B) *the applicant for a permit is a transmit-*  
14           *ting utility under this Act but does not qualify to*  
15           *apply for a permit or siting approval for the pro-*  
16           *posed project in a State because the applicant does*  
17           *not serve end-use customers in the State; or*

18           “(C) *a State commission or other entity that has*  
19           *authority to approve the siting of the facilities has—*

20                     “(i) *withheld approval for more than 1 year*  
21           *after the filing of an application pursuant to ap-*  
22           *plicable law seeking approval or 1 year after the*  
23           *designation of the relevant national interest elec-*  
24           *tric transmission corridor, whichever is later; or*

1           “(ii) conditioned its approval in such a  
2           manner that the proposed construction or modi-  
3           fication will not significantly reduce trans-  
4           mission congestion in interstate commerce or is  
5           not economically feasible;

6           “(2) the facilities to be authorized by the permit  
7           will be used for the transmission of electric energy in  
8           interstate commerce;

9           “(3) the proposed construction or modification is  
10          consistent with the public interest;

11          “(4) the proposed construction or modification  
12          will significantly reduce transmission congestion in  
13          interstate commerce and protects or benefits con-  
14          sumers; and

15          “(5) the proposed construction or modification is  
16          consistent with sound national energy policy and will  
17          enhance energy independence.

18          “(c) *PERMIT APPLICATIONS.*—Permit applications  
19          under subsection (b) shall be made in writing to the Com-  
20          mission. The Commission shall issue rules setting forth the  
21          form of the application, the information to be contained in  
22          the application, and the manner of service of notice of the  
23          permit application upon interested persons.

24          “(d) *COMMENTS.*—In any proceeding before the Com-  
25          mission under subsection (b), the Commission shall afford

1 *each State in which a transmission facility covered by the*  
2 *permit is or will be located, each affected Federal agency*  
3 *and Indian tribe, private property owners, and other inter-*  
4 *ested persons, a reasonable opportunity to present their*  
5 *views and recommendations with respect to the need for and*  
6 *impact of a facility covered by the permit.*

7       “(e) *RIGHTS-OF-WAY.—In the case of a permit under*  
8 *subsection (b) for electric transmission facilities to be lo-*  
9 *cated on property other than property owned by the United*  
10 *States or a State, if the permit holder cannot acquire by*  
11 *contract, or is unable to agree with the owner of the prop-*  
12 *erty to the compensation to be paid for, the necessary right-*  
13 *of-way to construct or modify such transmission facilities,*  
14 *the permit holder may acquire the right-of-way by the exer-*  
15 *cise of the right of eminent domain in the district court*  
16 *of the United States for the district in which the property*  
17 *concerned is located, or in the appropriate court of the State*  
18 *in which the property is located. The practice and proce-*  
19 *dure in any action or proceeding for that purpose in the*  
20 *district court of the United States shall conform as nearly*  
21 *as may be with the practice and procedure in similar action*  
22 *or proceeding in the courts of the State where the property*  
23 *is situated.*

1       “(f) *STATE LAW.*—Nothing in this section shall pre-  
2 clude any person from constructing or modifying any  
3 transmission facility pursuant to State law.

4       “(g) *COMPENSATION.*—Any exercise of eminent do-  
5 main authority pursuant to this section shall be considered  
6 a taking of private property for which just compensation  
7 is due. Just compensation shall be an amount equal to the  
8 full fair market value of the property taken on the date of  
9 the exercise of eminent domain authority, except that the  
10 compensation shall exceed fair market value if necessary to  
11 make the landowner whole for decreases in the value of any  
12 portion of the land not subject to eminent domain. Any par-  
13 cel of land acquired by eminent domain under this sub-  
14 section shall be transferred back to the owner from whom  
15 it was acquired (or his heirs or assigns) if the land is not  
16 used for the construction or modification of electric trans-  
17 mission facilities within a reasonable period of time after  
18 the acquisition. Other than construction, modification, op-  
19 eration, or maintenance of electric transmission facilities  
20 and related facilities, property acquired under subsection  
21 (e) may not be used for any purpose (including use for any  
22 heritage area, recreational trail, or park) without the con-  
23 sent of the owner of the parcel from whom the property was  
24 acquired (or the owner’s heirs or assigns).

1       “(h) *COORDINATION OF FEDERAL AUTHORIZATIONS*  
2 *FOR TRANSMISSION AND DISTRIBUTION FACILITIES.*—

3               “(1) *LEAD AGENCY.*—*If an applicant, or pro-*  
4 *spective applicant, for a Federal authorization related*  
5 *to an electric transmission or distribution facility so*  
6 *requests, the Department of Energy (DOE) shall act*  
7 *as the lead agency for purposes of coordinating all*  
8 *applicable Federal authorizations and related envi-*  
9 *ronmental reviews of the facility. For purposes of this*  
10 *subsection, the term ‘Federal authorization’ means*  
11 *any authorization required under Federal law in*  
12 *order to site a transmission or distribution facility,*  
13 *including but not limited to such permits, special use*  
14 *authorizations, certifications, opinions, or other ap-*  
15 *provals as may be required, whether issued by a Fed-*  
16 *eral or a State agency. To the maximum extent prac-*  
17 *ticable under applicable Federal law, the Secretary of*  
18 *Energy shall coordinate this Federal authorization*  
19 *and review process with any Indian tribes, multi-*  
20 *State entities, and State agencies that are responsible*  
21 *for conducting any separate permitting and environ-*  
22 *mental reviews of the facility, to ensure timely and ef-*  
23 *ficent review and permit decisions.*

24               “(2) *AUTHORITY TO SET DEADLINES.*—*As lead*  
25 *agency, the Department of Energy, in consultation*

1       *with agencies responsible for Federal authorizations*  
2       *and, as appropriate, with Indian tribes, multi-State*  
3       *entities, and State agencies that are willing to coordi-*  
4       *nate their own separate permitting and environ-*  
5       *mental reviews with the Federal authorization and*  
6       *environmental reviews, shall establish prompt and*  
7       *binding intermediate milestones and ultimate dead-*  
8       *lines for the review of, and Federal authorization de-*  
9       *cisions relating to, the proposed facility. The Sec-*  
10       *retary of Energy shall ensure that once an applica-*  
11       *tion has been submitted with such data as the Sec-*  
12       *retary considers necessary, all permit decisions and*  
13       *related environmental reviews under all applicable*  
14       *Federal laws shall be completed within 1 year or, if*  
15       *a requirement of another provision of Federal law*  
16       *makes this impossible, as soon thereafter as is prac-*  
17       *ticable. The Secretary of Energy also shall provide an*  
18       *expeditious pre-application mechanism for prospec-*  
19       *tive applicants to confer with the agencies involved to*  
20       *have each such agency determine and communicate to*  
21       *the prospective applicant within 60 days of when the*  
22       *prospective applicant submits a request for such in-*  
23       *formation concerning—*

24                       *“(A) the likelihood of approval for a poten-*  
25                       *tial facility; and*

1           “(B) *key issues of concern to the agencies*  
2           *and public.*

3           “(3) *CONSOLIDATED ENVIRONMENTAL REVIEW*  
4           *AND RECORD OF DECISION.—As lead agency head, the*  
5           *Secretary of Energy, in consultation with the affected*  
6           *agencies, shall prepare a single environmental review*  
7           *document, which shall be used as the basis for all de-*  
8           *cisions on the proposed project under Federal law.*  
9           *The document may be an environmental assessment*  
10          *or environmental impact statement under the Na-*  
11          *tional Environmental Policy Act of 1969 if war-*  
12          *ranted, or such other form of analysis as may be war-*  
13          *ranted. The Secretary of Energy and the heads of*  
14          *other agencies shall streamline the review and permit-*  
15          *ting of transmission and distribution facilities within*  
16          *corridors designated under section 503 of the Federal*  
17          *Land Policy and Management Act (43 U.S.C. 1763)*  
18          *by fully taking into account prior analyses and deci-*  
19          *sions relating to the corridors. Such document shall*  
20          *include consideration by the relevant agencies of any*  
21          *applicable criteria or other matters as required under*  
22          *applicable laws.*

23          “(4) *APPEALS.—In the event that any agency*  
24          *has denied a Federal authorization required for a*  
25          *transmission or distribution facility, or has failed to*



1        *act by the deadline established by the Secretary pur-*  
2        *suant to this section for deciding whether to issue the*  
3        *authorization, the applicant or any State in which*  
4        *the facility would be located may file an appeal with*  
5        *the Secretary, who shall, in consultation with the af-*  
6        *ected agency, review the denial or take action on the*  
7        *pending application. Based on the overall record and*  
8        *in consultation with the affected agency, the Secretary*  
9        *may then either issue the necessary authorization*  
10       *with any appropriate conditions, or deny the applica-*  
11       *tion. The Secretary shall issue a decision within 90*  
12       *days of the filing of the appeal. In making a decision*  
13       *under this paragraph, the Secretary shall comply*  
14       *with applicable requirements of Federal law, includ-*  
15       *ing any requirements of the Endangered Species Act,*  
16       *the Clean Water Act, the National Forest Manage-*  
17       *ment Act, the National Environmental Policy Act of*  
18       *1969, and the Federal Land Policy and Management*  
19       *Act.*

20                *“(5) CONFORMING REGULATIONS AND MEMO-*  
21        *RANDA OF UNDERSTANDING.—Not later than 18*  
22        *months after the date of enactment of this section, the*  
23        *Secretary of Energy shall issue any regulations nec-*  
24        *essary to implement this subsection. Not later than 1*  
25        *year after the date of enactment of this section, the*

1     *Secretary and the heads of all Federal agencies with*  
2     *authority to issue Federal authorizations shall enter*  
3     *into Memoranda of Understanding to ensure the time-*  
4     *ly and coordinated review and permitting of elec-*  
5     *tricity transmission and distribution facilities. The*  
6     *head of each Federal agency with authority to issue*  
7     *a Federal authorization shall designate a senior offi-*  
8     *cial responsible for, and dedicate sufficient other staff*  
9     *and resources to ensure, full implementation of the*  
10    *DOE regulations and any Memoranda. Interested In-*  
11    *Indian tribes, multi-State entities, and State agencies*  
12    *may enter such Memoranda of Understanding.*

13           “(6) *DURATION AND RENEWAL.*—*Each Federal*  
14    *land use authorization for an electricity transmission*  
15    *or distribution facility shall be issued—*

16                   “(A) *for a duration, as determined by the*  
17           *Secretary of Energy, commensurate with the an-*  
18           *ticipated use of the facility, and*

19                   “(B) *with appropriate authority to manage*  
20           *the right-of-way for reliability and environ-*  
21           *mental protection.*

22    *Upon the expiration of any such authorization (in-*  
23    *cluding an authorization issued prior to enactment of*  
24    *this section), the authorization shall be reviewed for*  
25    *renewal taking fully into account reliance on such*

1        *electricity infrastructure, recognizing its importance*  
2        *for public health, safety and economic welfare and as*  
3        *a legitimate use of Federal lands.*

4                “(7) *MAINTAINING AND ENHANCING THE TRANS-*  
5        *MISSION INFRASTRUCTURE.—In exercising the respon-*  
6        *sibilities under this section, the Secretary of Energy*  
7        *shall consult regularly with the Federal Energy Regu-*  
8        *latory Commission (FERC), FERC-approved electric*  
9        *reliability organizations (including related regional*  
10       *entities), and FERC-approved Regional Transmission*  
11       *Organizations and Independent System Operators.*

12              “(i) *INTERSTATE COMPACTS.—The consent of Congress*  
13       *is hereby given for 3 or more contiguous States to enter*  
14       *into an interstate compact, subject to approval by Congress,*  
15       *establishing regional transmission siting agencies to facili-*  
16       *tate siting of future electric energy transmission facilities*  
17       *within such States and to carry out the electric energy*  
18       *transmission siting responsibilities of such States. The Sec-*  
19       *retary of Energy may provide technical assistance to re-*  
20       *gional transmission siting agencies established under this*  
21       *subsection. Such regional transmission siting agencies shall*  
22       *have the authority to review, certify, and permit siting of*  
23       *transmission facilities, including facilities in national in-*  
24       *terest electric transmission corridors (other than facilities*  
25       *on property owned by the United States). The Commission*

1 *shall have no authority to issue a permit for the construc-*  
 2 *tion or modification of electric transmission facilities with-*  
 3 *in a State that is a party to a compact, unless the members*  
 4 *of a compact are in disagreement and the Secretary makes,*  
 5 *after notice and an opportunity for a hearing, the finding*  
 6 *described in subsection (b)(1)(C).*

7       “(j) *SAVINGS CLAUSE.*—Nothing in this section shall  
 8 *be construed to affect any requirement of the environmental*  
 9 *laws of the United States, including, but not limited to,*  
 10 *the National Environmental Policy Act of 1969. Subsection*  
 11 *(h)(4) of this section shall not apply to any Congression-*  
 12 *ally-designated components of the National Wilderness*  
 13 *Preservation System, the National Wild and Scenic Rivers*  
 14 *System, or the National Park system (including National*  
 15 *Monuments therein).*

16       “(k) *ERCOT.*—This section shall not apply within the  
 17 *area referred to in section 212(k)(2)(A).*”.

18       “(b) *REPORTS TO CONGRESS ON CORRIDORS AND*  
 19 *RIGHTS OF WAY ON FEDERAL LANDS.*—The Secretary of  
 20 *the Interior, the Secretary of Energy, the Secretary of Agri-*  
 21 *culture, and the Chairman of the Council on Environ-*  
 22 *mental Quality shall, within 90 days of the date of enact-*  
 23 *ment of this subsection, submit a joint report to Congress*  
 24 *identifying each of the following:*

1           (1) *All existing designated transmission and dis-*  
 2           *tribution corridors on Federal land and the status of*  
 3           *work related to proposed transmission and distribu-*  
 4           *tion corridor designations under Title V of the Fed-*  
 5           *eral Land Policy and Management Act (43 U.S.C.*  
 6           *1761 et. Seq.), the schedule for completing such work,*  
 7           *any impediments to completing the work, and steps*  
 8           *that Congress could take to expedite the process.*

9           (2) *The number of pending applications to locate*  
 10          *transmission and distribution facilities on Federal*  
 11          *lands, key information relating to each such facility,*  
 12          *how long each application has been pending, the*  
 13          *schedule for issuing a timely decision as to each facil-*  
 14          *ity, and progress in incorporating existing and new*  
 15          *such rights-of-way into relevant land use and resource*  
 16          *management plans or their equivalent.*

17          (3) *The number of existing transmission and dis-*  
 18          *tribution rights-of-way on Federal lands that will*  
 19          *come up for renewal within the following 5, 10, and*  
 20          *15 year periods, and a description of how the Secre-*  
 21          *taries plan to manage such renewals.*

22 **§ 1222. Third-party finance**

23          (a) *EXISTING FACILITIES.*—*The Secretary of Energy*  
 24          *(hereinafter in this section referred to as the “Secretary”),*  
 25          *acting through the Administrator of the Western Area*

1 *Power Administration (hereinafter in this section referred*  
2 *to as “WAPA”), or through the Administrator of the South-*  
3 *western Power Administration (hereinafter in this section*  
4 *referred to as “SWPA”), or both, may design, develop, con-*  
5 *struct, operate, maintain, or own, or participate with other*  
6 *entities in designing, developing, constructing, operating,*  
7 *maintaining, or owning, an electric power transmission fa-*  
8 *cility and related facilities (“Project”) needed to upgrade*  
9 *existing transmission facilities owned by SWPA or WAPA*  
10 *if the Secretary of Energy, in consultation with the applica-*  
11 *ble Administrator, determines that the proposed Project—*

12           (1)(A) *is located in a national interest electric*  
13 *transmission corridor designated under section 216(a)*  
14 *of the Federal Power Act and will reduce congestion*  
15 *of electric transmission in interstate commerce; or*

16           (B) *is necessary to accommodate an actual or*  
17 *projected increase in demand for electric transmission*  
18 *capacity;*

19           (2) *is consistent with—*

20           (A) *transmission needs identified, in a*  
21 *transmission expansion plan or otherwise, by the*  
22 *appropriate Regional Transmission Organiza-*  
23 *tion or Independent System Operator (as defined*  
24 *in the Federal Power Act), if any, or approved*  
25 *regional reliability organization; and*

1                   (B) efficient and reliable operation of the  
2                   transmission grid; and

3                   (3) would be operated in conformance with pru-  
4                   dent utility practice.

5           (b) NEW FACILITIES.—The Secretary, acting through  
6 WAPA or SWPA, or both, may design, develop, construct,  
7 operate, maintain, or own, or participate with other enti-  
8 ties in designing, developing, constructing, operating,  
9 maintaining, or owning, a new electric power transmission  
10 facility and related facilities (“Project”) located within any  
11 State in which WAPA or SWPA operates if the Secretary,  
12 in consultation with the applicable Administrator, deter-  
13 mines that the proposed Project—

14                   (1)(A) is located in an area designated under  
15                   section 216(a) of the Federal Power Act and will re-  
16                   duce congestion of electric transmission in interstate  
17                   commerce; or

18                   (B) is necessary to accommodate an actual or  
19                   projected increase in demand for electric transmission  
20                   capacity;

21                   (2) is consistent with—

22                               (A) transmission needs identified, in a  
23                               transmission expansion plan or otherwise, by the  
24                               appropriate Regional Transmission Organiza-

1            *tion or Independent System Operator, if any, or*  
 2            *approved regional reliability organization; and*

3            *(B) efficient and reliable operation of the*  
 4            *transmission grid;*

5            *(3) will be operated in conformance with pru-*  
 6            *dent utility practice;*

7            *(4) will be operated by, or in conformance with*  
 8            *the rules of, the appropriate (A) Regional Trans-*  
 9            *mission Organization or Independent System Oper-*  
 10           *ator, if any, or (B) if such an organization does not*  
 11           *exist, regional reliability organization; and*

12           *(5) will not duplicate the functions of existing*  
 13           *transmission facilities or proposed facilities which are*  
 14           *the subject of ongoing or approved siting and related*  
 15           *permitting proceedings.*

16           *(c) OTHER FUNDS.—*

17           *(1) IN GENERAL.—In carrying out a Project*  
 18           *under subsection (a) or (b), the Secretary may accept*  
 19           *and use funds contributed by another entity for the*  
 20           *purpose of carrying out the Project.*

21           *(2) AVAILABILITY.—The contributed funds shall*  
 22           *be available for expenditure for the purpose of car-*  
 23           *rying out the Project—*

24           *(A) without fiscal year limitation; and*



1                   (B) as if the funds had been appropriated  
2                   specifically for that Project.

3                   (3) *ALLOCATION OF COSTS.*—In carrying out a  
4                   Project under subsection (a) or (b), any costs of the  
5                   Project not paid for by contributions from another en-  
6                   tity shall be collected through rates charged to cus-  
7                   tomers using the new transmission capability pro-  
8                   vided by the Project and allocated equitably among  
9                   these project beneficiaries using the new transmission  
10                  capability.

11                  (d) *RELATIONSHIP TO OTHER LAWS.*—Nothing in this  
12                  section affects any requirement of—

13                       (1) any Federal environmental law, including  
14                       the National Environmental Policy Act of 1969 (42  
15                       U.S.C. 4321 et seq.);

16                       (2) any Federal or State law relating to the  
17                       siting of energy facilities; or

18                       (3) any existing authorizing statutes.

19                  (e) *SAVINGS CLAUSE.*—Nothing in this section shall  
20                  constrain or restrict an Administrator in the utilization of  
21                  other authority delegated to the Administrator of WAPA or  
22                  SWPA.

23                  (f) *SECRETARIAL DETERMINATIONS.*—Any determina-  
24                  tion made pursuant to subsections (a) or (b) shall be based  
25                  on findings by the Secretary using the best available data.

1       (g) *MAXIMUM FUNDING AMOUNT.*—*The Secretary shall*  
2 *not accept and use more than \$100,000,000 under sub-*  
3 *section (c)(1) for the period encompassing fiscal years 2006*  
4 *through 2015.*

5   **§ 1223. Transmission system monitoring**

6       *Within 6 months after the date of enactment of this*  
7 *Act, the Secretary of Energy and the Federal Energy Regu-*  
8 *latory Commission shall study and report to Congress on*  
9 *the steps which must be taken to establish a system to make*  
10 *available to all transmission system owners and Regional*  
11 *Transmission Organizations (as defined in the Federal*  
12 *Power Act) within the Eastern and Western Interconnec-*  
13 *tions real-time information on the functional status of all*  
14 *transmission lines within such Interconnections. In such*  
15 *study, the Commission shall assess technical means for im-*  
16 *plementing such transmission information system and*  
17 *identify the steps the Commission or Congress must take*  
18 *to require the implementation of such system.*

19   **§ 1224. Advanced transmission technologies**

20       (a) *AUTHORITY.*—*The Federal Energy Regulatory*  
21 *Commission, in the exercise of its authorities under the Fed-*  
22 *eral Power Act and the Public Utility Regulatory Policies*  
23 *Act of 1978, shall encourage the deployment of advanced*  
24 *transmission technologies.*

1       (b) *DEFINITION.*—*For the purposes of this section, the*  
2 *term “advanced transmission technologies” means tech-*  
3 *nologies that increase the capacity, efficiency, or reliability*  
4 *of existing or new transmission facilities, including, but not*  
5 *limited to—*

6           (1) *high-temperature lines (including super-*  
7 *conducting cables);*

8           (2) *underground cables;*

9           (3) *advanced conductor technology (including*  
10 *advanced composite conductors, high-temperature low-*  
11 *sag conductors, and fiber optic temperature sensing*  
12 *conductors);*

13          (4) *high-capacity ceramic electric wire, connec-*  
14 *tors, and insulators;*

15          (5) *optimized transmission line configurations*  
16 *(including multiple phased transmission lines);*

17          (6) *modular equipment;*

18          (7) *wireless power transmission;*

19          (8) *ultra-high voltage lines;*

20          (9) *high-voltage DC technology;*

21          (10) *flexible AC transmission systems;*

22          (11) *energy storage devices (including pumped*  
23 *hydro, compressed air, superconducting magnetic en-*  
24 *ergy storage, flywheels, and batteries);*

25          (12) *controllable load;*

(c) *OBSOLETE OR IMPRACTICABLE TECHNOLOGIES.*—  
The Commission is authorized to cease encouraging the deployment of any technology described in this section on a finding that such technology has been rendered obsolete or otherwise impracticable to deploy.

16 ***§1225. Electric transmission and distribution pro-***  
17 ***grams***

(a) *ELECTRIC TRANSMISSION AND DISTRIBUTION PROGRAM.*—The Secretary of Energy (hereinafter in this section referred to as the “Secretary”) acting through the Director of the Office of Electric Transmission and Distribution shall establish a comprehensive research, development, demonstration and commercial application program to promote improved reliability and efficiency of electrical

1 *transmission and distribution systems. This program shall*  
2 *include—*

3           (1) *advanced energy delivery and storage tech-*  
4 *nologies, materials, and systems, including new trans-*  
5 *mission technologies, such as flexible alternating cur-*  
6 *rent transmission systems, composite conductor mate-*  
7 *rials and other technologies that enhance reliability,*  
8 *operational flexibility, or power-carrying capability;*

9           (2) *advanced grid reliability and efficiency tech-*  
10 *nology development;*

11           (3) *technologies contributing to significant load*  
12 *reductions;*

13           (4) *advanced metering, load management, and*  
14 *control technologies;*

15           (5) *technologies to enhance existing grid compo-*  
16 *nents;*

17           (6) *the development and use of high-temperature*  
18 *superconductors to—*

19                   (A) *enhance the reliability, operational*  
20 *flexibility, or power-carrying capability of elec-*  
21 *tric transmission or distribution systems; or*

22                   (B) *increase the efficiency of electric energy*  
23 *generation, transmission, distribution, or storage*  
24 *systems;*

1           (7) *integration of power systems, including sys-*  
2           *tems to deliver high-quality electric power, electric*  
3           *power reliability, and combined heat and power;*

4           (8) *supply of electricity to the power grid by*  
5           *small scale, distributed and residential-based power*  
6           *generators;*

7           (9) *the development and use of advanced grid de-*  
8           *sign, operation and planning tools;*

9           (10) *any other infrastructure technologies, as ap-*  
10          *propriate; and*

11          (11) *technology transfer and education.*

12          (b) *PROGRAM PLAN.*—*Not later than 1 year after the*  
13          *date of the enactment of this legislation, the Secretary, in*  
14          *consultation with other appropriate Federal agencies, shall*  
15          *prepare and transmit to Congress a 5-year program plan*  
16          *to guide activities under this section. In preparing the pro-*  
17          *gram plan, the Secretary may consult with utilities, energy*  
18          *services providers, manufacturers, institutions of higher*  
19          *education, other appropriate State and local agencies, envi-*  
20          *ronmental organizations, professional and technical soci-*  
21          *eties, and any other persons the Secretary considers appro-*  
22          *priate.*

23          (c) *IMPLEMENTATION.*—*The Secretary shall consider*  
24          *implementing this program using a consortium of industry,*  
25          *university and national laboratory participants.*

1       (d) *REPORT.*—Not later than 2 years after the trans-  
2       mittal of the plan under subsection (b), the Secretary shall  
3       transmit a report to Congress describing the progress made  
4       under this section and identifying any additional resources  
5       needed to continue the development and commercial appli-  
6       cation of transmission and distribution infrastructure tech-  
7       nologies.

8       (e) *POWER DELIVERY RESEARCH INITIATIVE.*—

9               (1) *IN GENERAL.*—The Secretary shall establish  
10       a research, development, demonstration, and commer-  
11       cial application initiative specifically focused on  
12       power delivery utilizing components incorporating  
13       high temperature superconductivity.

14              (2) *GOALS.*—The goals of this initiative shall be  
15       to—

16                   (A) establish facilities to develop high tem-  
17       perature superconductivity power applications  
18       in partnership with manufacturers and utilities;

19                   (B) provide technical leadership for estab-  
20       lishing reliability for high temperature super-  
21       conductivity power applications including suit-  
22       able modeling and analysis;

23                   (C) facilitate commercial transition toward  
24       direct current power transmission, storage, and

1        *use for high power systems utilizing high tem-*  
2        *perature superconductivity; and*

3                *(D) facilitate the integration of very low*  
4        *impedance high temperature superconducting*  
5        *wires and cables in existing electric networks to*  
6        *improve system performance, power flow control*  
7        *and reliability.*

8        *(3) REQUIREMENTS.—The initiative shall in-*  
9        *clude—*

10               *(A) feasibility analysis, planning, research,*  
11        *and design to construct demonstrations of super-*  
12        *conducting links in high power, direct current*  
13        *and controllable alternating current trans-*  
14        *mission systems;*

15               *(B) public-private partnerships to dem-*  
16        *onstrate deployment of high temperature super-*  
17        *conducting cable into testbeds simulating a real-*  
18        *istic transmission grid and under varying trans-*  
19        *mission conditions, including actual grid inser-*  
20        *tions; and*

21               *(C) testbeds developed in cooperation with*  
22        *national laboratories, industries, and univer-*  
23        *sities to demonstrate these technologies, prepare*  
24        *the technologies for commercial introduction, and*



1           *address cost or performance roadblocks to suc-*  
 2           *cessful commercial use.*

3           (4) *AUTHORIZATION OF APPROPRIATIONS.—For*  
 4           *purposes of carrying out this subsection, there are au-*  
 5           *thorized to be appropriated—*

6                     *(A) for fiscal year 2006, \$15,000,000;*

7                     *(B) for fiscal year 2007, \$20,000,000;*

8                     *(C) for fiscal year 2008, \$30,000,000;*

9                     *(D) for fiscal year 2009, \$35,000,000; and*

10                    *(E) for fiscal year 2010, \$40,000,000.*

11   **§ 1226. Advanced Power System Technology Incentive**  
 12                     **Program**

13           (a) *PROGRAM.—The Secretary of Energy is authorized*  
 14           *to establish an Advanced Power System Technology Incen-*  
 15           *tive Program to support the deployment of certain advanced*  
 16           *power system technologies and to improve and protect cer-*  
 17           *tain critical governmental, industrial, and commercial*  
 18           *processes. Funds provided under this section shall be used*  
 19           *by the Secretary to make incentive payments to eligible*  
 20           *owners or operators of advanced power system technologies*  
 21           *to increase power generation through enhanced operational,*  
 22           *economic, and environmental performance. Payments under*  
 23           *this section may only be made upon receipt by the Secretary*  
 24           *of an incentive payment application establishing an appli-*  
 25           *cant as either—*

1           (1) *a qualifying advanced power system tech-*  
 2           *nology facility; or*

3           (2) *a qualifying security and assured power fa-*  
 4           *cility.*

5           (b) *INCENTIVES.*—*Subject to availability of funds, a*  
 6           *payment of 1.8 cents per kilowatt-hour shall be paid to the*  
 7           *owner or operator of a qualifying advanced power system*  
 8           *technology facility under this section for electricity gen-*  
 9           *erated at such facility. An additional 0.7 cents per kilowatt-*  
 10          *hour shall be paid to the owner or operator of a qualifying*  
 11          *security and assured power facility for electricity generated*  
 12          *at such facility. Any facility qualifying under this section*  
 13          *shall be eligible for an incentive payment for up to, but*  
 14          *not more than, the first 10,000,000 kilowatt-hours produced*  
 15          *in any fiscal year.*

16          (c) *ELIGIBILITY.*—*For purposes of this section:*

17           (1) *QUALIFYING ADVANCED POWER SYSTEM*  
 18           *TECHNOLOGY FACILITY.*—*The term “qualifying ad-*  
 19           *vanced power system technology facility” means a fa-*  
 20           *cility using an advanced fuel cell, turbine, or hybrid*  
 21           *power system or power storage system to generate or*  
 22           *store electric energy.*

23           (2) *QUALIFYING SECURITY AND ASSURED POWER*  
 24           *FACILITY.*—*The term “qualifying security and as-*  
 25           *suured power facility” means a qualifying advanced*

1        *power system technology facility determined by the*  
2        *Secretary of Energy, in consultation with the Sec-*  
3        *retary of Homeland Security, to be in critical need of*  
4        *secure, reliable, rapidly available, high-quality power*  
5        *for critical governmental, industrial, or commercial*  
6        *applications.*

7        *(d) AUTHORIZATION.—There are authorized to be ap-*  
8        *propriated to the Secretary of Energy for the purposes of*  
9        *this section, \$10,000,000 for each of the fiscal years 2006*  
10       *through 2012.*

11       **§ 1227. Office of Electric Transmission and Distribu-**  
12       **tion**

13       *(a) CREATION OF AN OFFICE OF ELECTRIC TRANS-*  
14       *MISSION AND DISTRIBUTION.—Title II of the Department*  
15       *of Energy Organization Act (42 U.S.C. 7131 et seq.) (as*  
16       *amended by section 502(a) of this Act) is amended by in-*  
17       *serting the following after section 217, as added by title V*  
18       *of this Act:*

19       **“SEC. 218. OFFICE OF ELECTRIC TRANSMISSION AND DIS-**  
20       **TRIBUTION.**

21       *“(a) ESTABLISHMENT.—There is established within*  
22       *the Department an Office of Electric Transmission and*  
23       *Distribution. This Office shall be headed by a Director, sub-*  
24       *ject to the authority of the Secretary. The Director shall*  
25       *be appointed by the Secretary. The Director shall be com-*

1 *pensated at the annual rate prescribed for level IV of the*  
2 *Executive Schedule under section 5315 of title 5, United*  
3 *States Code.*

4 “(b) *DIRECTOR.*—*The Director shall—*

5 “(1) *coordinate and develop a comprehensive,*  
6 *multi-year strategy to improve the Nation’s electricity*  
7 *transmission and distribution;*

8 “(2) *implement or, where appropriate, coordi-*  
9 *nate the implementation of, the recommendations*  
10 *made in the Secretary’s May 2002 National Trans-*  
11 *mission Grid Study;*

12 “(3) *oversee research, development, and dem-*  
13 *onstration to support Federal energy policy related to*  
14 *electricity transmission and distribution;*

15 “(4) *grant authorizations for electricity import*  
16 *and export pursuant to section 202(c), (d), (e), and*  
17 *(f) of the Federal Power Act (16 U.S.C. 824a);*

18 “(5) *perform other functions, assigned by the*  
19 *Secretary, related to electricity transmission and dis-*  
20 *tribution; and*

21 “(6) *develop programs for workforce training in*  
22 *power and transmission engineering.”.*

23 (b) *CONFORMING AMENDMENTS.*—(1) *The table of con-*  
24 *tents of the Department of Energy Organization Act (42*

1 *U.S.C. 7101 note) is amended by inserting after the item*  
 2 *relating to section 217 the following new item:*

*“Sec. 218. Office of Electric Transmission and Distribution.”.*

3 *(2) Section 5315 of title 5, United States Code, is*  
 4 *amended by inserting after the item relating to “Inspector*  
 5 *General, Department of Energy.” the following:*

6 *“Director, Office of Electric Transmission and*  
 7 *Distribution, Department of Energy.”.*

8 ***Subtitle C—Transmission***  
 9 ***Operation Improvements***

10 ***SEC. 1231. OPEN NONDISCRIMINATORY ACCESS.***

11 *Part II of the Federal Power Act (16 U.S.C. 824 et*  
 12 *seq.) is amended by inserting after section 211 the following*  
 13 *new section:*

14 ***“SEC. 211A. OPEN ACCESS BY UNREGULATED TRANSMIT-***  
 15 ***TING UTILITIES.***

16 *“(a) TRANSMISSION SERVICES.—Subject to section*  
 17 *212(h), the Commission may, by rule or order, require an*  
 18 *unregulated transmitting utility to provide transmission*  
 19 *services—*

20 *“(1) at rates that are comparable to those that*  
 21 *the unregulated transmitting utility charges itself;*  
 22 *and*

23 *“(2) on terms and conditions (not relating to*  
 24 *rates) that are comparable to those under which such*  
 25 *unregulated transmitting utility provides trans-*

1       mission services to itself and that are not unduly dis-  
2       criminatory or preferential.

3       “(b) *EXEMPTION.*—The Commission shall exempt from  
4 any rule or order under this section any unregulated trans-  
5 mitting utility that—

6               “(1) sells no more than 4,000,000 megawatt  
7 hours of electricity per year; or

8               “(2) does not own or operate any transmission  
9 facilities that are necessary for operating an inter-  
10 connected transmission system (or any portion there-  
11 of); or

12              “(3) meets other criteria the Commission deter-  
13 mines to be in the public interest.

14       “(c) *LOCAL DISTRIBUTION FACILITIES.*—The require-  
15 ments of subsection (a) shall not apply to facilities used  
16 in local distribution.

17       “(d) *EXEMPTION TERMINATION.*—Whenever the Com-  
18 mission, after an evidentiary hearing held upon a com-  
19 plaint and after giving consideration to reliability stand-  
20 ards established under section 215, finds on the basis of a  
21 preponderance of the evidence that any exemption granted  
22 pursuant to subsection (b) unreasonably impairs the con-  
23 tinued reliability of an interconnected transmission system,  
24 it shall revoke the exemption granted to that transmitting  
25 utility.

1       “(e) *APPLICATION TO UNREGULATED TRANSMITTING*  
 2 *UTILITIES.*—*The rate changing procedures applicable to*  
 3 *public utilities under subsections (c) and (d) of section 205*  
 4 *are applicable to unregulated transmitting utilities for pur-*  
 5 *poses of this section.*

6       “(f) *REMAND.*—*In exercising its authority under para-*  
 7 *graph (1) of subsection (a), the Commission may remand*  
 8 *transmission rates to an unregulated transmitting utility*  
 9 *for review and revision where necessary to meet the require-*  
 10 *ments of subsection (a).*

11       “(g) *OTHER REQUESTS.*—*The provision of trans-*  
 12 *mission services under subsection (a) does not preclude a*  
 13 *request for transmission services under section 211.*

14       “(h) *LIMITATION.*—*The Commission may not require*  
 15 *a State or municipality to take action under this section*  
 16 *that would violate a private activity bond rule for purposes*  
 17 *of section 141 of the Internal Revenue Code of 1986 (26*  
 18 *U.S.C. 141).*

19       “(i) *TRANSFER OF CONTROL OF TRANSMITTING FA-*  
 20 *CILITIES.*—*Nothing in this section authorizes the Commis-*  
 21 *sion to require an unregulated transmitting utility to*  
 22 *transfer control or operational control of its transmitting*  
 23 *facilities to an RTO or any other Commission-approved*  
 24 *independent transmission organization designated to pro-*  
 25 *vide nondiscriminatory transmission access.*

1       “(j) *DEFINITION.*—For purposes of this section, the  
 2 term ‘unregulated transmitting utility’ means an entity  
 3 that—

4               “(1) owns or operates facilities used for the  
 5 transmission of electric energy in interstate com-  
 6 merce; and

7               “(2) is an entity described in section 201(f).”.

8 **SEC. 1232. SENSE OF CONGRESS ON REGIONAL TRANS-**  
 9 **MISSION ORGANIZATIONS.**

10       *It is the sense of Congress that, in order to promote*  
 11 *fair, open access to electric transmission service, benefit re-*  
 12 *tail consumers, facilitate wholesale competition, improve ef-*  
 13 *ficiencies in transmission grid management, promote grid*  
 14 *reliability, remove opportunities for unduly discriminatory*  
 15 *or preferential transmission practices, and provide for the*  
 16 *efficient development of transmission infrastructure needed*  
 17 *to meet the growing demands of competitive wholesale*  
 18 *power markets, all transmitting utilities in interstate com-*  
 19 *merce should voluntarily become members of Regional*  
 20 *Transmission Organizations as defined in section 3 of the*  
 21 *Federal Power Act.*

22 **SEC. 1233. REGIONAL TRANSMISSION ORGANIZATION AP-**  
 23 **PLICATIONS PROGRESS REPORT.**

24       *Not later than 120 days after the date of enactment*  
 25 *of this section, the Federal Energy Regulatory Commission*



1 *shall submit to Congress a report containing each of the*  
2 *following:*

3           (1) *A list of all regional transmission organiza-*  
4 *tion applications filed at the Commission pursuant to*  
5 *subpart F of part 35 of title 18, Code of Federal Reg-*  
6 *ulations (in this section referred to as “Order No.*  
7 *2000”), including an identification of each public*  
8 *utility and other entity included within the proposed*  
9 *membership of the regional transmission organiza-*  
10 *tion.*

11           (2) *A brief description of the status of each pend-*  
12 *ing regional transmission organization application,*  
13 *including a precise explanation of how each fails to*  
14 *comply with the minimal requirements of Order No.*  
15 *2000 and what steps need to be taken to bring each*  
16 *application into such compliance.*

17           (3) *For any application that has not been fi-*  
18 *nally approved by the Commission, a detailed de-*  
19 *scription of every aspect of the application that the*  
20 *Commission has determined does not conform to the*  
21 *requirements of Order No. 2000.*

22           (4) *For any application that has not been fi-*  
23 *nally approved by the Commission, an explanation*  
24 *by the Commission of why the items described pursu-*  
25 *ant to paragraph (3) constitute material noncompli-*

1        *ance with the requirements of the Commission’s Order*  
 2        *No. 2000 sufficient to justify denial of approval by*  
 3        *the Commission.*

4            *(5) For all regional transmission organization*  
 5        *applications filed pursuant to the Commission’s*  
 6        *Order No. 2000, whether finally approved or not—*

7            *(A) a discussion of that regional trans-*  
 8        *mission organization’s efforts to minimize rate*  
 9        *seams between itself and—*

10           *(i) other regional transmission organi-*  
 11        *zations; and*

12           *(ii) entities not participating in a re-*  
 13        *gional transmission organization;*

14           *(B) a discussion of the impact of such seams*  
 15        *on consumers and wholesale competition; and*

16           *(C) a discussion of minimizing cost-shifting*  
 17        *on consumers.*

18    **SEC. 1234. FEDERAL UTILITY PARTICIPATION IN REGIONAL**  
 19        **TRANSMISSION ORGANIZATIONS.**

20        *(a) DEFINITIONS.—For purposes of this section—*

21           *(1) APPROPRIATE FEDERAL REGULATORY AU-*  
 22        *THORITY.—The term “appropriate Federal regulatory*  
 23        *authority” means—*

24           *(A) with respect to a Federal power mar-*  
 25        *keting agency (as defined in the Federal Power*

1       *Act), the Secretary of Energy, except that the*  
2       *Secretary may designate the Administrator of a*  
3       *Federal power marketing agency to act as the*  
4       *appropriate Federal regulatory authority with*  
5       *respect to the transmission system of that Fed-*  
6       *eral power marketing agency; and*

7               *(B) with respect to the Tennessee Valley Au-*  
8       *thority, the Board of Directors of the Tennessee*  
9       *Valley Authority.*

10       *(2) FEDERAL UTILITY.—The term “Federal util-*  
11       *ity” means a Federal power marketing agency or the*  
12       *Tennessee Valley Authority.*

13       *(3) TRANSMISSION SYSTEM.—The term “trans-*  
14       *mission system” means electric transmission facilities*  
15       *owned, leased, or contracted for by the United States*  
16       *and operated by a Federal utility.*

17       *(b) TRANSFER.—The appropriate Federal regulatory*  
18       *authority is authorized to enter into a contract, agreement*  
19       *or other arrangement transferring control and use of all or*  
20       *part of the Federal utility’s transmission system to an RTO*  
21       *or ISO (as defined in the Federal Power Act), approved*  
22       *by the Federal Energy Regulatory Commission. Such con-*  
23       *tract, agreement or arrangement shall include—*

24               *(1) performance standards for operation and use*  
25       *of the transmission system that the head of the Fed-*

1        *eral utility determines necessary or appropriate, in-*  
2        *cluding standards that assure recovery of all the Fed-*  
3        *eral utility's costs and expenses related to the trans-*  
4        *mission facilities that are the subject of the contract,*  
5        *agreement or other arrangement; consistency with ex-*  
6        *isting contracts and third-party financing arrange-*  
7        *ments; and consistency with said Federal utility's*  
8        *statutory authorities, obligations, and limitations;*

9            *(2) provisions for monitoring and oversight by*  
10        *the Federal utility of the RTO's or ISO's fulfillment*  
11        *of the terms and conditions of the contract, agreement*  
12        *or other arrangement, including a provision for the*  
13        *resolution of disputes through arbitration or other*  
14        *means with the regional transmission organization or*  
15        *with other participants, notwithstanding the obliga-*  
16        *tions and limitations of any other law regarding ar-*  
17        *bitration; and*

18            *(3) a provision that allows the Federal utility to*  
19        *withdraw from the RTO or ISO and terminate the*  
20        *contract, agreement or other arrangement in accord-*  
21        *ance with its terms.*

22        *Neither this section, actions taken pursuant to it, nor any*  
23        *other transaction of a Federal utility using an RTO or ISO*  
24        *shall confer upon the Federal Energy Regulatory Commis-*  
25        *sion jurisdiction or authority over the Federal utility's elec-*

1 *tric generation assets, electric capacity or energy that the*  
 2 *Federal utility is authorized by law to market, or the Fed-*  
 3 *eral utility's power sales activities.*

4 (c) *EXISTING STATUTORY AND OTHER OBLIGA-*  
 5 *TIONS.—*

6 (1) *SYSTEM OPERATION REQUIREMENTS.—No*  
 7 *statutory provision requiring or authorizing a Fed-*  
 8 *eral utility to transmit electric power or to construct,*  
 9 *operate or maintain its transmission system shall be*  
 10 *construed to prohibit a transfer of control and use of*  
 11 *its transmission system pursuant to, and subject to*  
 12 *all requirements of subsection (b).*

13 (2) *OTHER OBLIGATIONS.—This subsection shall*  
 14 *not be construed to—*

15 (A) *suspend, or exempt any Federal utility*  
 16 *from, any provision of existing Federal law, in-*  
 17 *cluding but not limited to any requirement or*  
 18 *direction relating to the use of the Federal util-*  
 19 *ity's transmission system, environmental protec-*  
 20 *tion, fish and wildlife protection, flood control,*  
 21 *navigation, water delivery, or recreation; or*

22 (B) *authorize abrogation of any contract or*  
 23 *treaty obligation.*

24 (3) *REPEAL.—Section 311 of title III of Appen-*  
 25 *dix B of the Act of October 27, 2000 (P.L. 106–377,*

1        *section 1(a)(2); 114 Stat. 1441, 1441A–80; 16 U.S.C.*  
2        *824n) is repealed.*

3    **SEC. 1235. STANDARD MARKET DESIGN.**

4        (a) *REMAND.*—*The Commission’s proposed rule-*  
5        *making entitled “Remedying Undue Discrimination*  
6        *through Open Access Transmission Service and Standard*  
7        *Electricity Market Design” (Docket No. RM01–12–000)*  
8        *(“SMD NOPR”) is remanded to the Commission for recon-*  
9        *sideration. No final rule mandating a standard electricity*  
10       *market design pursuant to the proposed rulemaking, includ-*  
11       *ing any rule or order of general applicability within the*  
12       *scope of the proposed rulemaking, may be issued before Oc-*  
13       *tober 31, 2006, or take effect before December 31, 2006. Any*  
14       *final rule issued by the Commission pursuant to the pro-*  
15       *posed rulemaking shall be preceded by a second notice of*  
16       *proposed rulemaking issued after the date of enactment of*  
17       *this Act and an opportunity for public comment.*

18       (b) *SAVINGS CLAUSE.*—*This section shall not be con-*  
19       *strued to modify or diminish any authority or obligation*  
20       *the Commission has under this Act, the Federal Power Act,*  
21       *or other applicable law, including, but not limited to, any*  
22       *authority to—*

23                (1) *issue any rule or order (of general or par-*  
24        *ticular applicability) pursuant to any such authority*  
25        *or obligation; or*

1           (2) *act on a filing or filings by 1 or more trans-*  
 2           *mitting utilities for the voluntary formation of a Re-*  
 3           *gional Transmission Organization or Independent*  
 4           *System Operator (as defined in the Federal Power*  
 5           *Act) (and related market structures or rules) or vol-*  
 6           *untary modification of an existing Regional Trans-*  
 7           *mission Organization or Independent System Oper-*  
 8           *ator (and related market structures or rules).*

9   **SEC. 1236. NATIVE LOAD SERVICE OBLIGATION.**

10       *Part II of the Federal Power Act (16 U.S.C. 824 et*  
 11       *seq.) is amended by adding at the end the following:*

12   **“SEC. 217. NATIVE LOAD SERVICE OBLIGATION.**

13       “(a) *MEETING SERVICE OBLIGATIONS.—(1) Any load-*  
 14       *serving entity that, as of the date of enactment of this sec-*  
 15       *tion—*

16           “(A) *owns generation facilities, markets the out-*  
 17           *put of Federal generation facilities, or holds rights*  
 18           *under 1 or more wholesale contracts to purchase elec-*  
 19           *tric energy, for the purpose of meeting a service obli-*  
 20           *gation, and*

21           “(B) *by reason of ownership of transmission fa-*  
 22           *cilities, or 1 or more contracts or service agreements*  
 23           *for firm transmission service, holds firm transmission*  
 24           *rights for delivery of the output of such generation fa-*

1        *cilities or such purchased energy to meet such service*  
2        *obligation,*  
3        *is entitled to use such firm transmission rights, or, equiva-*  
4        *lent tradable or financial transmission rights, in order to*  
5        *deliver such output or purchased energy, or the output of*  
6        *other generating facilities or purchased energy to the extent*  
7        *deliverable using such rights, to the extent required to meet*  
8        *its service obligation.*

9        *“(2) To the extent that all or a portion of the service*  
10       *obligation covered by such firm transmission rights or*  
11       *equivalent tradable or financial transmission rights is*  
12       *transferred to another load-serving entity, the successor*  
13       *load-serving entity shall be entitled to use the firm trans-*  
14       *mission rights or equivalent tradable or financial trans-*  
15       *mission rights associated with the transferred service obli-*  
16       *gation. Subsequent transfers to another load-serving entity,*  
17       *or back to the original load-serving entity, shall be entitled*  
18       *to the same rights.*

19       *“(3) The Commission shall exercise its authority under*  
20       *this Act in a manner that facilitates the planning and ex-*  
21       *pansion of transmission facilities to meet the reasonable*  
22       *needs of load-serving entities to satisfy their service obliga-*  
23       *tions, and enables load-serving entities to secure firm trans-*  
24       *mission rights (or equivalent tradable or financial rights)*



1 *on a long term basis for long term power supply arrange-*  
2 *ments made, or planned, to meet such needs.*

3       “(b) *ALLOCATION OF TRANSMISSION RIGHTS.—*Noth-  
4 *ing in subsections (a)(1) and (a) (2) of this section shall*  
5 *affect any existing or future methodology employed by an*  
6 *RTO or ISO for allocating or auctioning transmission*  
7 *rights if such RTO or ISO was authorized by the Commis-*  
8 *sion to allocate or auction financial transmission rights on*  
9 *its system as of January 1, 2005, and the Commission de-*  
10 *termines that any future allocation or auction is just, rea-*  
11 *sonable and not unduly discriminatory or preferential, pro-*  
12 *vided, however, that if such an RTO or ISO never allocated*  
13 *financial transmission rights on its system that pertained*  
14 *to a period before January 1, 2005, with respect to any*  
15 *application by such RTO or ISO that would change its*  
16 *methodology the Commission shall exercise its authority in*  
17 *a manner consistent with the Act and the policies expressed*  
18 *in subsections (a)(1) and (a)(2) as applied to firm trans-*  
19 *mission rights held by a load serving entity as of January*  
20 *1, 2005, to the extent the associated generation ownership*  
21 *or power purchase arrangements remain in effect.*

22       “(c) *CERTAIN TRANSMISSION RIGHTS.—*The Commis-  
23 *sion may exercise authority under this Act to make trans-*  
24 *mission rights not used to meet an obligation covered by*  
25 *subsection (a) available to other entities in a manner deter-*

1 *mined by the Commission to be just, reasonable, and not*  
2 *unduly discriminatory or preferential.*

3       “(d) *OBLIGATION TO BUILD.*—*Nothing in this Act*  
4 *shall relieve a load-serving entity from any obligation*  
5 *under State or local law to build transmission or distribu-*  
6 *tion facilities adequate to meet its service obligations.*

7       “(e) *CONTRACTS.*—*Nothing in this section shall pro-*  
8 *vide a basis for abrogating any contract or service agree-*  
9 *ment for firm transmission service or rights in effect as of*  
10 *the date of the enactment of this subsection. If an ISO in*  
11 *the Western Interconnection had allocated financial trans-*  
12 *mission rights prior to the date of enactment of this section*  
13 *but had not done so with respect to one or more load-serving*  
14 *entities’ firm transmission rights held under contracts to*  
15 *which the preceding sentence applies (or held by reason of*  
16 *ownership of transmission facilities), such load-serving en-*  
17 *tities may not be required, without their consent, to convert*  
18 *such firm transmission rights to tradable or financial*  
19 *rights, except where the load-serving entity has voluntarily*  
20 *joined the ISO as a participating transmission owner (or*  
21 *its successor) in accordance with the ISO tariff.*

22       “(f) *WATER PUMPING FACILITIES.*—*The Commission*  
23 *shall ensure that any entity described in section 201(f) that*  
24 *owns transmission facilities used predominately to support*  
25 *its own water pumping facilities shall have, with respect*

1 *to such facilities, protections for transmission service com-*  
 2 *parable to those provided to load-serving entities pursuant*  
 3 *to this section.*

4       “(g) *FERC RULEMAKING ON LONG-TERM TRANS-*  
 5 *MISSION RIGHTS IN ORGANIZED MARKETS.*—*Within one*  
 6 *year after the date of enactment of this section and after*  
 7 *notice and an opportunity for comment, the Commission*  
 8 *shall by rule or order implement subsection (a)(3) in Com-*  
 9 *mission-approved RTOs and ISOs with organized elec-*  
 10 *tricity markets.*

11       “(h) *ERCOT.*—*This section shall not apply within the*  
 12 *area referred to in section 212(k)(2)(A).*

13       “(i) *JURISDICTION.*—*This section does not authorize*  
 14 *the Commission to take any action not otherwise within*  
 15 *its jurisdiction.*

16       “(j) *EFFECT OF EXERCISING RIGHTS.*—*An entity that*  
 17 *lawfully exercises rights granted under subsection (a) shall*  
 18 *not be considered by such action as engaging in undue dis-*  
 19 *crimination or preference under this Act.*

20       “(k) *TVA AREA.*—*For purposes of subsection*  
 21 *(a)(1)(B), a load-serving entity that is located within the*  
 22 *service area of the Tennessee Valley Authority and that has*  
 23 *a firm wholesale power supply contract with the Tennessee*  
 24 *Valley Authority shall be deemed to hold firm transmission*  
 25 *rights for the transmission of such power.*

1       “(l) *DEFINITIONS.*—*For purposes of this section:*

2               “(1) *The term ‘distribution utility’ means an*  
3       *electric utility that has a service obligation to end-*  
4       *users or to a State utility or electric cooperative that,*  
5       *directly or indirectly, through 1 or more additional*  
6       *State utilities or electric cooperatives, provides elec-*  
7       *tric service to end-users.*

8               “(2) *The term ‘load-serving entity’ means a dis-*  
9       *tribution utility or an electric utility that has a serv-*  
10       *ice obligation.*

11              “(3) *The term ‘service obligation’ means a re-*  
12       *quirement applicable to, or the exercise of authority*  
13       *granted to, an electric utility under Federal, State or*  
14       *local law or under long-term contracts to provide elec-*  
15       *tric service to end-users or to a distribution utility.*

16              “(4) *The term ‘State utility’ means a State or*  
17       *any political subdivision of a State, or any agency,*  
18       *authority, or instrumentality of any 1 or more of the*  
19       *foregoing, or a corporation which is wholly owned, di-*  
20       *rectly or indirectly, by any 1 or more of the foregoing,*  
21       *competent to carry on the business of developing,*  
22       *transmitting, utilizing or distributing power.”.*

1 **SEC. 1237. STUDY ON THE BENEFITS OF ECONOMIC DIS-**  
2 **PATCH.**

3 (a) *STUDY.*—*The Secretary of Energy, in coordination*  
4 *and consultation with the States, shall conduct a study*  
5 *on—*

6 (1) *the procedures currently used by electric util-*  
7 *ities to perform economic dispatch;*

8 (2) *identifying possible revisions to those proce-*  
9 *dures to improve the ability of nonutility generation*  
10 *resources to offer their output for sale for the purpose*  
11 *of inclusion in economic dispatch; and*

12 (3) *the potential benefits to residential, commer-*  
13 *cial, and industrial electricity consumers nationally*  
14 *and in each state if economic dispatch procedures*  
15 *were revised to improve the ability of nonutility gen-*  
16 *eration resources to offer their output for inclusion in*  
17 *economic dispatch.*

18 (b) *DEFINITION.*—*The term “economic dispatch” when*  
19 *used in this section means the operation of generation fa-*  
20 *cilities to produce energy at the lowest cost to reliably serve*  
21 *consumers, recognizing any operational limits of generation*  
22 *and transmission facilities.*

23 (c) *REPORT TO CONGRESS AND THE STATES.*—*Not*  
24 *later than 90 days after the date of enactment of this Act,*  
25 *and on a yearly basis following, the Secretary of Energy*  
26 *shall submit a report to Congress and the States on the re-*

1 *sults of the study conducted under subsection (a), including*  
 2 *recommendations to Congress and the States for any sug-*  
 3 *gested legislative or regulatory changes.*

4       ***Subtitle D—Transmission Rate***  
 5                       ***Reform***

6 ***SEC. 1241. TRANSMISSION INFRASTRUCTURE INVESTMENT.***

7       *Part II of the Federal Power Act (16 U.S.C. 824 et*  
 8 *seq.) is amended by adding at the end the following:*

9 ***“SEC. 218. TRANSMISSION INFRASTRUCTURE INVESTMENT.***

10       *“(a) RULEMAKING REQUIREMENT.—Within 1 year*  
 11 *after the enactment of this section, the Commission shall*  
 12 *establish, by rule, incentive-based (including, but not lim-*  
 13 *ited to performance-based) rate treatments for the trans-*  
 14 *mission of electric energy in interstate commerce by public*  
 15 *utilities for the purpose of benefiting consumers by ensuring*  
 16 *reliability and reducing the cost of delivered power by re-*  
 17 *ducing transmission congestion. Such rule shall—*

18               *“(1) promote reliable and economically efficient*  
 19 *transmission and generation of electricity by pro-*  
 20 *moting capital investment in the enlargement, im-*  
 21 *provement, maintenance and operation of facilities*  
 22 *for the transmission of electric energy in interstate*  
 23 *commerce;*

1           “(2) provide a return on equity that attracts  
2           new investment in transmission facilities (including  
3           related transmission technologies);

4           “(3) encourage deployment of transmission tech-  
5           nologies and other measures to increase the capacity  
6           and efficiency of existing transmission facilities and  
7           improve the operation of such facilities; and

8           “(4) allow recovery of all prudently incurred  
9           costs necessary to comply with mandatory reliability  
10          standards issued pursuant to section 215 of this Act.

11       *The Commission may, from time to time, revise such rule.*

12       “(b) *ADDITIONAL INCENTIVES FOR RTO PARTICIPA-*  
13       *TION.—In the rule issued under this section, the Commis-*  
14       *sion shall, to the extent within its jurisdiction, provide for*  
15       *incentives to each transmitting utility or electric utility*  
16       *that joins a Regional Transmission Organization or Inde-*  
17       *pendent System Operator. Incentives provided by the Com-*  
18       *mission pursuant to such rule shall include—*

19           “(1) recovery of all prudently incurred costs to  
20           develop and participate in any proposed or approved  
21           RTO, ISO, or independent transmission company;

22           “(2) recovery of all costs previously approved by  
23           a State commission which exercised jurisdiction over  
24           the transmission facilities prior to the utility’s par-  
25           ticipation in the RTO or ISO, including costs nec-

1        *essary to honor preexisting transmission service con-*  
2        *tracts, in a manner which does not reduce the reve-*  
3        *nues the utility receives for transmission services for*  
4        *a reasonable transition period after the utility joins*  
5        *the RTO or ISO;*

6                *“(3) recovery as an expense in rates of the costs*  
7        *prudently incurred to conduct transmission planning*  
8        *and reliability activities, including the costs of par-*  
9        *ticipating in RTO, ISO and other regional planning*  
10       *activities and design, study and other precertification*  
11       *costs involved in seeking permits and approvals for*  
12       *proposed transmission facilities;*

13               *“(4) a current return in rates for construction*  
14       *work in progress for transmission facilities and full*  
15       *recovery of prudently incurred costs for constructing*  
16       *transmission facilities;*

17               *“(5) formula transmission rates; and*

18               *“(6) a maximum 15 year accelerated deprecia-*  
19       *tion on new transmission facilities for rate treatment*  
20       *purposes.*

21       *The Commission shall ensure that any costs recoverable*  
22       *pursuant to this subsection may be recovered by such utility*  
23       *through the transmission rates charged by such utility or*  
24       *through the transmission rates charged by the RTO or ISO*  
25       *that provides transmission service to such utility.*



1       “(c) *JUST AND REASONABLE RATES.*—All rates ap-  
 2       proved under the rules adopted pursuant to this section, in-  
 3       cluding any revisions to such rules, are subject to the re-  
 4       quirement of sections 205 and 206 that all rates, charges,  
 5       terms, and conditions be just and reasonable and not un-  
 6       duly discriminatory or preferential.”.

## 7       ***Subtitle E—Amendments to PURPA***

### 8       ***SEC. 1251. NET METERING AND ADDITIONAL STANDARDS.***

9       (a) *ADOPTION OF STANDARDS.*—Section 111(d) of the  
 10       Public Utility Regulatory Policies Act of 1978 (16 U.S.C.  
 11       2621(d)) is amended by adding at the end the following:

12               “(11) *NET METERING.*—Each electric utility  
 13       shall make available upon request net metering serv-  
 14       ice to any electric consumer that the electric utility  
 15       serves. For purposes of this paragraph, the term ‘net  
 16       metering service’ means service to an electric con-  
 17       sumer under which electric energy generated by that  
 18       electric consumer from an eligible on-site generating  
 19       facility and delivered to the local distribution facili-  
 20       ties may be used to offset electric energy provided by  
 21       the electric utility to the electric consumer during the  
 22       applicable billing period.

23               “(12) *FUEL SOURCES.*—Each electric utility  
 24       shall develop a plan to minimize dependence on 1 fuel  
 25       source and to ensure that the electric energy it sells

1        *to consumers is generated using a diverse range of*  
 2        *fuels and technologies, including renewable tech-*  
 3        *nologies.*

4                *“(13) FOSSIL FUEL GENERATION EFFICIENCY.—*  
 5        *Each electric utility shall develop and implement a*  
 6        *10-year plan to increase the efficiency of its fossil fuel*  
 7        *generation.”.*

8        *(b) COMPLIANCE.—*

9                *(1) TIME LIMITATIONS.—Section 112(b) of the*  
 10        *Public Utility Regulatory Policies Act of 1978 (16*  
 11        *U.S.C. 2622(b)) is amended by adding at the end the*  
 12        *following:*

13                *“(3)(A) Not later than 2 years after the enactment of*  
 14        *this paragraph, each State regulatory authority (with re-*  
 15        *spect to each electric utility for which it has ratemaking*  
 16        *authority) and each nonregulated electric utility shall com-*  
 17        *mence the consideration referred to in section 111, or set*  
 18        *a hearing date for such consideration, with respect to each*  
 19        *standard established by paragraphs (11) through (13) of*  
 20        *section 111(d).*

21                *“(B) Not later than 3 years after the date of the enact-*  
 22        *ment of this paragraph, each State regulatory authority*  
 23        *(with respect to each electric utility for which it has rate-*  
 24        *making authority), and each nonregulated electric utility,*  
 25        *shall complete the consideration, and shall make the deter-*

1 mination, referred to in section 111 with respect to each  
 2 standard established by paragraphs (11) through (13) of  
 3 section 111(d).”.

4 (2) *FAILURE TO COMPLY.*—Section 112(c) of the  
 5 *Public Utility Regulatory Policies Act of 1978* (16  
 6 *U.S.C. 2622(c)*) is amended by adding at the end the  
 7 following:

8 “In the case of each standard established by paragraphs  
 9 (11) through (13) of section 111(d), the reference contained  
 10 in this subsection to the date of enactment of this Act shall  
 11 be deemed to be a reference to the date of enactment of such  
 12 paragraphs (11) through (13).”.

13 (3) *PRIOR STATE ACTIONS.*—

14 (A) *IN GENERAL.*—Section 112 of the *Public*  
 15 *Utility Regulatory Policies Act of 1978* (16  
 16 *U.S.C. 2622*) is amended by adding at the end  
 17 the following:

18 “(d) *PRIOR STATE ACTIONS.*—Subsections (b) and (c)  
 19 of this section shall not apply to the standards established  
 20 by paragraphs (11) through (13) of section 111(d) in the  
 21 case of any electric utility in a State if, before the enact-  
 22 ment of this subsection—

23 “(1) the State has implemented for such utility  
 24 the standard concerned (or a comparable standard);

1           “(2) the State regulatory authority for such  
 2           State or relevant nonregulated electric utility has con-  
 3           ducted a proceeding to consider implementation of the  
 4           standard concerned (or a comparable standard) for  
 5           such utility; or

6           “(3) the State legislature has voted on the imple-  
 7           mentation of such standard (or a comparable stand-  
 8           ard) for such utility.”.

9           (B) CROSS REFERENCE.—Section 124 of  
 10          such Act (16 U.S.C. 2634) is amended by adding  
 11          the following at the end thereof: “In the case of  
 12          each standard established by paragraphs (11)  
 13          through (13) of section 111(d), the reference con-  
 14          tained in this subsection to the date of enactment  
 15          of this Act shall be deemed to be a reference to  
 16          the date of enactment of such paragraphs (11)  
 17          through (13).”.

18 **SEC. 1252. SMART METERING.**

19          (a) IN GENERAL.—Section 111(d) of the Public Utility  
 20          Regulatory Policies Act of 1978 (16 U.S.C. 2621(d)) is  
 21          amended by adding at the end the following:

22                 “(14) TIME-BASED METERING AND COMMUNICA-  
 23                 TIONS.—

24                         “(A) Not later than 18 months after the  
 25                         date of enactment of this paragraph, each electric

1        *utility shall offer each of its customer classes,*  
2        *and provide individual customers upon customer*  
3        *request, a time-based rate schedule under which*  
4        *the rate charged by the electric utility varies*  
5        *during different time periods and reflects the*  
6        *variance, if any, in the utility's costs of gener-*  
7        *ating and purchasing electricity at the wholesale*  
8        *level. The time-based rate schedule shall enable*  
9        *the electric consumer to manage energy use and*  
10       *cost through advanced metering and communica-*  
11       *tions technology.*

12        *“(B) The types of time-based rate schedules*  
13        *that may be offered under the schedule referred*  
14        *to in subparagraph (A) include, among others—*

15                *“(i) time-of-use pricing whereby elec-*  
16                *tricity prices are set for a specific time pe-*  
17                *riod on an advance or forward basis, typi-*  
18                *cally not changing more often than twice a*  
19                *year, based on the utility's cost of gener-*  
20                *ating and/or purchasing such electricity at*  
21                *the wholesale level for the benefit of the con-*  
22                *sumer. Prices paid for energy consumed*  
23                *during these periods shall be pre-established*  
24                *and known to consumers in advance of such*  
25                *consumption, allowing them to vary their*

1           *demand and usage in response to such*  
2           *prices and manage their energy costs by*  
3           *shifting usage to a lower cost period or re-*  
4           *ducing their consumption overall;*

5           “(ii) *critical peak pricing whereby*  
6           *time-of-use prices are in effect except for*  
7           *certain peak days, when prices may reflect*  
8           *the costs of generating and/or purchasing*  
9           *electricity at the wholesale level and when*  
10          *consumers may receive additional discounts*  
11          *for reducing peak period energy consump-*  
12          *tion;*

13          “(iii) *real-time pricing whereby elec-*  
14          *tricity prices are set for a specific time pe-*  
15          *riod on an advanced or forward basis, re-*  
16          *flecting the utility’s cost of generating and/*  
17          *or purchasing electricity at the wholesale*  
18          *level, and may change as often as hourly;*  
19          *and*

20          “(iv) *credits for consumers with large*  
21          *loads who enter into pre-established peak*  
22          *load reduction agreements that reduce a*  
23          *utility’s planned capacity obligations.*

24          “(C) *Each electric utility subject to sub-*  
25          *paragraph (A) shall provide each customer re-*

1        *questing a time-based rate with a time-based*  
2        *meter capable of enabling the utility and cus-*  
3        *tomers to offer and receive such rate, respectively.*

4                *“(D) For purposes of implementing this*  
5        *paragraph, any reference contained in this sec-*  
6        *tion to the date of enactment of the Public Util-*  
7        *ity Regulatory Policies Act of 1978 shall be*  
8        *deemed to be a reference to the date of enactment*  
9        *of this paragraph.*

10               *“(E) In a State that permits third-party*  
11        *marketers to sell electric energy to retail electric*  
12        *consumers, such consumers shall be entitled to re-*  
13        *ceive the same time-based metering and commu-*  
14        *nications device and service as a retail electric*  
15        *consumer of the electric utility.*

16               *“(F) Notwithstanding subsections (b) and*  
17        *(c) of section 112, each State regulatory author-*  
18        *ity shall, not later than 18 months after the date*  
19        *of enactment of this paragraph conduct an inves-*  
20        *tigation in accordance with section 115(i) and*  
21        *issue a decision whether it is appropriate to im-*  
22        *plement the standards set out in subparagraphs*  
23        *(A) and (C).”.*

24        *(b) STATE INVESTIGATION OF DEMAND RESPONSE AND*  
25        *TIME-BASED METERING.—Section 115 of the Public Utility*

1 *Regulatory Policies Act of 1978 (16 U.S.C. 2625) is amend-*  
 2 *ed as follows:*

3           (1) *By inserting in subsection (b) after the*  
 4 *phrase “the standard for time-of-day rates established*  
 5 *by section 111(d)(3)” the following: “and the stand-*  
 6 *ard for time-based metering and communications es-*  
 7 *tablished by section 111(d)(14)”.*

8           (2) *By inserting in subsection (b) after the*  
 9 *phrase “are likely to exceed the metering” the fol-*  
 10 *lowing: “and communications”.*

11           (3) *By adding the at the end the following:*  
 12       “(i) *TIME-BASED METERING AND COMMUNICA-*  
 13 *TIONS.—In making a determination with respect to the*  
 14 *standard established by section 111(d)(14), the investiga-*  
 15 *tion requirement of section 111(d)(14)(F) shall be as fol-*  
 16 *lows: Each State regulatory authority shall conduct an in-*  
 17 *vestigation and issue a decision whether or not it is appro-*  
 18 *priate for electric utilities to provide and install time-based*  
 19 *meters and communications devices for each of their cus-*  
 20 *tomers which enable such customers to participate in time-*  
 21 *based pricing rate schedules and other demand response*  
 22 *programs.”.*

23           (c) *FEDERAL ASSISTANCE ON DEMAND RESPONSE.—*  
 24 *Section 132(a) of the Public Utility Regulatory Policies Act*  
 25 *of 1978 (16 U.S.C. 2642(a)) is amended by striking “and”*



1 *at the end of paragraph (3), striking the period at the end*  
2 *of paragraph (4) and inserting “; and”, and by adding the*  
3 *following at the end thereof:*

4           “(5) technologies, techniques, and rate-making  
5       *methods related to advanced metering and commu-*  
6       *nications and the use of these technologies, techniques*  
7       *and methods in demand response programs.”.*

8       (d) *FEDERAL GUIDANCE.—Section 132 of the Public*  
9 *Utility Regulatory Policies Act of 1978 (16 U.S.C. 2642)*  
10 *is amended by adding the following at the end thereof:*

11       “(d) *DEMAND RESPONSE.—The Secretary shall be re-*  
12 *sponsible for—*

13           “(1) *educating consumers on the availability, ad-*  
14 *vantages, and benefits of advanced metering and com-*  
15 *munications technologies, including the funding of*  
16 *demonstration or pilot projects;*

17           “(2) *working with States, utilities, other energy*  
18 *providers and advanced metering and communica-*  
19 *tions experts to identify and address barriers to the*  
20 *adoption of demand response programs; and*

21           “(3) *not later than 180 days after the date of en-*  
22 *actment of the Energy Policy Act of 2005, providing*  
23 *Congress with a report that identifies and quantifies*  
24 *the national benefits of demand response and makes*

1       *a recommendation on achieving specific levels of such*  
2       *benefits by January 1, 2007.”.*

3       *(e) DEMAND RESPONSE AND REGIONAL COORDINA-*  
4       *TION.—*

5               *(1) IN GENERAL.—It is the policy of the United*  
6       *States to encourage States to coordinate, on a re-*  
7       *gional basis, State energy policies to provide reliable*  
8       *and affordable demand response services to the public.*

9               *(2) TECHNICAL ASSISTANCE.—The Secretary of*  
10       *Energy shall provide technical assistance to States*  
11       *and regional organizations formed by 2 or more*  
12       *States to assist them in—*

13               *(A) identifying the areas with the greatest*  
14       *demand response potential;*

15               *(B) identifying and resolving problems in*  
16       *transmission and distribution networks, includ-*  
17       *ing through the use of demand response;*

18               *(C) developing plans and programs to use*  
19       *demand response to respond to peak demand or*  
20       *emergency needs; and*

21               *(D) identifying specific measures consumers*  
22       *can take to participate in these demand response*  
23       *programs.*

24               *(3) REPORT.—Not later than 1 year after the*  
25       *date of enactment of the Energy Policy Act of 2005,*

1       *the Commission shall prepare and publish an annual*  
2       *report, by appropriate region, that assesses demand*  
3       *response resources, including those available from all*  
4       *consumer classes, and which identifies and reviews—*

5               *(A) saturation and penetration rate of ad-*  
6               *vanced meters and communications technologies,*  
7               *devices and systems;*

8               *(B) existing demand response programs and*  
9               *time-based rate programs;*

10              *(C) the annual resource contribution of de-*  
11              *mand resources;*

12              *(D) the potential for demand response as a*  
13              *quantifiable, reliable resource for regional plan-*  
14              *ning purposes;*

15              *(E) steps taken to ensure that, in regional*  
16              *transmission planning and operations, demand*  
17              *resources are provided equitable treatment as a*  
18              *quantifiable, reliable resource relative to the re-*  
19              *source obligations of any load-serving entity,*  
20              *transmission provider, or transmitting party;*  
21              *and*

22              *(F) regulatory barriers to improved cus-*  
23              *tomers participation in demand response, peak*  
24              *reduction and critical period pricing programs.*

1       (f) *FEDERAL ENCOURAGEMENT OF DEMAND RE-*  
2 *SPONSE DEVICES.*—*It is the policy of the United States that*  
3 *time-based pricing and other forms of demand response,*  
4 *whereby electricity customers are provided with electricity*  
5 *price signals and the ability to benefit by responding to*  
6 *them, shall be encouraged, the deployment of such tech-*  
7 *nology and devices that enable electricity customers to par-*  
8 *ticipate in such pricing and demand response systems shall*  
9 *be facilitated, and unnecessary barriers to demand response*  
10 *participation in energy, capacity and ancillary service*  
11 *markets shall be eliminated. It is further the policy of the*  
12 *United States that the benefits of such demand response that*  
13 *accrue to those not deploying such technology and devices,*  
14 *but who are part of the same regional electricity entity,*  
15 *shall be recognized.*

16       (g) *TIME LIMITATIONS.*—*Section 112(b) of the Public*  
17 *Utility Regulatory Policies Act of 1978 (16 U.S.C. 2622(b))*  
18 *is amended by adding at the end the following:*

19               “(4)(A) *Not later than 1 year after the enact-*  
20 *ment of this paragraph, each State regulatory author-*  
21 *ity (with respect to each electric utility for which it*  
22 *has ratemaking authority) and each nonregulated*  
23 *electric utility shall commence the consideration re-*  
24 *ferred to in section 111, or set a hearing date for such*

1       *consideration, with respect to the standard established*  
2       *by paragraph (14) of section 111(d).*

3               “(B) Not later than 2 years after the date of the  
4       enactment of this paragraph, each State regulatory  
5       authority (with respect to each electric utility for  
6       which it has ratemaking authority), and each non-  
7       regulated electric utility, shall complete the consider-  
8       ation, and shall make the determination, referred to  
9       in section 111 with respect to the standard established  
10      by paragraph (14) of section 111(d).”.

11      (h) *FAILURE TO COMPLY.*—Section 112(c) of the Pub-  
12      lic Utility Regulatory Policies Act of 1978 (16 U.S.C.  
13      2622(c)) is amended by adding at the end the following:  
14      *“In the case of the standard established by paragraph (14)*  
15      *of section 111(d), the reference contained in this subsection*  
16      *to the date of enactment of this Act shall be deemed to be*  
17      *a reference to the date of enactment of such paragraph*  
18      *(14).”.*

19      (i) *PRIOR STATE ACTIONS REGARDING SMART ME-*  
20      *TERING STANDARDS.*—

21              (1) *IN GENERAL.*—Section 112 of the Public  
22      Utility Regulatory Policies Act of 1978 (16 U.S.C.  
23      2622) is amended by adding at the end the following:

24      “(e) *PRIOR STATE ACTIONS.*—Subsections (b) and (c)  
25      of this section shall not apply to the standard established

1 by paragraph (14) of section 111(d) in the case of any elec-  
 2 tric utility in a State if, before the enactment of this sub-  
 3 section—

4 “(1) the State has implemented for such utility  
 5 the standard concerned (or a comparable standard);

6 “(2) the State regulatory authority for such  
 7 State or relevant nonregulated electric utility has con-  
 8 ducted a proceeding to consider implementation of the  
 9 standard concerned (or a comparable standard) for  
 10 such utility within the previous 3 years; or

11 “(3) the State legislature has voted on the imple-  
 12 mentation of such standard (or a comparable stand-  
 13 ard) for such utility within the previous 3 years.”.

14 (2) *CROSS REFERENCE.*—Section 124 of such Act  
 15 (16 U.S.C. 2634) is amended by adding the following  
 16 at the end thereof: “In the case of the standard estab-  
 17 lished by paragraph (14) of section 111(d), the ref-  
 18 erence contained in this subsection to the date of en-  
 19 actment of this Act shall be deemed to be a reference  
 20 to the date of enactment of such paragraph (14).”.

21 **SEC. 1253. COGENERATION AND SMALL POWER PRODUC-**  
 22 **TION PURCHASE AND SALE REQUIREMENTS.**

23 (a) *TERMINATION OF MANDATORY PURCHASE AND*  
 24 *SALE REQUIREMENTS.*—Section 210 of the Public Utility

1 *Regulatory Policies Act of 1978 (16 U.S.C. 824a-3) is*  
2 *amended by adding at the end the following:*

3 “(m) *TERMINATION OF MANDATORY PURCHASE AND*  
4 *SALE REQUIREMENTS.—*

5 “(1) *OBLIGATION TO PURCHASE.—**After the date*  
6 *of enactment of this subsection, no electric utility*  
7 *shall be required to enter into a new contract or obli-*  
8 *gation to purchase electric energy from a qualifying*  
9 *cogeneration facility or a qualifying small power pro-*  
10 *duction facility under this section if the Commission*  
11 *finds that the qualifying cogeneration facility or*  
12 *qualifying small power production facility has non-*  
13 *discriminatory access to—*

14 “(A)(i) *independently administered, auc-*  
15 *tion-based day ahead and real time wholesale*  
16 *markets for the sale of electric energy; and (ii)*  
17 *wholesale markets for long-term sales of capacity*  
18 *and electric energy; or*

19 “(B)(i) *transmission and interconnection*  
20 *services that are provided by a Commission-ap-*  
21 *proved regional transmission entity and admin-*  
22 *istered pursuant to an open access transmission*  
23 *tariff that affords nondiscriminatory treatment*  
24 *to all customers; and (ii) competitive wholesale*  
25 *markets that provide a meaningful opportunity*

1       to sell capacity, including long-term and short-  
2       term sales, and electric energy, including long-  
3       term, short-term and real-time sales, to buyers  
4       other than the utility to which the qualifying fa-  
5       cility is interconnected. In determining whether  
6       a meaningful opportunity to sell exists, the Com-  
7       mission shall consider, among other factors, evi-  
8       dence of transactions within the relevant market;  
9       or

10               “(C) wholesale markets for the sale of capac-  
11       ity and electric energy that are, at a minimum,  
12       of comparable competitive quality as markets de-  
13       scribed in subparagraphs (A) and (B).

14               “(2) REVISED PURCHASE AND SALE OBLIGATION  
15       FOR NEW FACILITIES.—(A) After the date of enact-  
16       ment of this subsection, no electric utility shall be re-  
17       quired pursuant to this section to enter into a new  
18       contract or obligation to purchase from or sell electric  
19       energy to a facility that is not an existing qualifying  
20       cogeneration facility unless the facility meets the cri-  
21       teria for qualifying cogeneration facilities established  
22       by the Commission pursuant to the rulemaking re-  
23       quired by subsection (n).



1           “(B) For the purposes of this paragraph, the  
2           term ‘existing qualifying cogeneration facility’ means  
3           a facility that—

4                   “(i) was a qualifying cogeneration facility  
5                   on the date of enactment of subsection (m); or

6                   “(ii) had filed with the Commission a no-  
7                   tice of self-certification, self recertification or an  
8                   application for Commission certification under  
9                   18 C.F.R. 292.207 prior to the date on which the  
10                  Commission issues the final rule required by sub-  
11                  section (n).

12           “(3) COMMISSION REVIEW.—Any electric utility  
13           may file an application with the Commission for re-  
14           lief from the mandatory purchase obligation pursuant  
15           to this subsection on a service territory-wide basis.  
16           Such application shall set forth the factual basis upon  
17           which relief is requested and describe why the condi-  
18           tions set forth in subparagraphs (A), (B) or (C) of  
19           paragraph (1) of this subsection have been met. After  
20           notice, including sufficient notice to potentially af-  
21           fected qualifying cogeneration facilities and quali-  
22           fying small power production facilities, and an op-  
23           portunity for comment, the Commission shall make a  
24           final determination within 90 days of such applica-  
25           tion regarding whether the conditions set forth in sub-

1        paragraphs (A), (B) or (C) of paragraph (1) have  
2        been met.

3                “(4) *REINSTATEMENT OF OBLIGATION TO PUR-*  
4        *CHASE.—At any time after the Commission makes a*  
5        *finding under paragraph (3) relieving an electric*  
6        *utility of its obligation to purchase electric energy, a*  
7        *qualifying cogeneration facility, a qualifying small*  
8        *power production facility, a State agency, or any*  
9        *other affected person may apply to the Commission*  
10       *for an order reinstating the electric utility’s obliga-*  
11       *tion to purchase electric energy under this section.*  
12       *Such application shall set forth the factual basis upon*  
13       *which the application is based and describe why the*  
14       *conditions set forth in subparagraphs (A), (B) or (C)*  
15       *of paragraph (1) of this subsection are no longer met.*  
16       *After notice, including sufficient notice to potentially*  
17       *affected utilities, and opportunity for comment, the*  
18       *Commission shall issue an order within 90 days of*  
19       *such application reinstating the electric utility’s obli-*  
20       *gation to purchase electric energy under this section*  
21       *if the Commission finds that the conditions set forth*  
22       *in subparagraphs (A), (B) or (C) of paragraph (1)*  
23       *which relieved the obligation to purchase, are no*  
24       *longer met.*

1           “(5) *OBLIGATION TO SELL.*—After the date of en-  
2           *actment of this subsection, no electric utility shall be*  
3           *required to enter into a new contract or obligation to*  
4           *sell electric energy to a qualifying cogeneration facil-*  
5           *ity or a qualifying small power production facility*  
6           *under this section if the Commission finds that—*

7                   “(A) *competing retail electric suppliers are*  
8                   *willing and able to sell and deliver electric en-*  
9                   *ergy to the qualifying cogeneration facility or*  
10                  *qualifying small power production facility; and*

11                  “(B) *the electric utility is not required by*  
12                  *State law to sell electric energy in its service ter-*  
13                  *ritory.*

14           “(6) *NO EFFECT ON EXISTING RIGHTS AND REM-*  
15           *EDIES.*—Nothing in this subsection affects the rights  
16           *or remedies of any party under any contract or obli-*  
17           *gation, in effect or pending approval before the ap-*  
18           *propriate State regulatory authority or non-regulated*  
19           *electric utility on the date of enactment of this sub-*  
20           *section, to purchase electric energy or capacity from*  
21           *or to sell electric energy or capacity to a qualifying*  
22           *cogeneration facility or qualifying small power pro-*  
23           *duction facility under this Act (including the right to*  
24           *recover costs of purchasing electric energy or capac-*  
25           *ity).*

1           “(7) *RECOVERY OF COSTS.*—(A) *The Commission*  
2           *shall issue and enforce such regulations as are nec-*  
3           *essary to ensure that an electric utility that purchases*  
4           *electric energy or capacity from a qualifying cogen-*  
5           *eration facility or qualifying small power production*  
6           *facility in accordance with any legally enforceable ob-*  
7           *ligation entered into or imposed under this section re-*  
8           *covers all prudently incurred costs associated with the*  
9           *purchase.*

10           “(B) *A regulation under subparagraph (A) shall*  
11           *be enforceable in accordance with the provisions of*  
12           *law applicable to enforcement of regulations under the*  
13           *Federal Power Act (16 U.S.C. 791a et seq.).*

14           “(n) *RULEMAKING FOR NEW QUALIFYING FACILI-*  
15           *TIES.*—(1)(A) *Not later than 180 days after the date of en-*  
16           *actment of this section, the Commission shall issue a rule*  
17           *revising the criteria in 18 C.F.R. 292.205 for new quali-*  
18           *fying cogeneration facilities seeking to sell electric energy*  
19           *pursuant to section 210 of this Act to ensure—*

20           “(i) *that the thermal energy output of a new*  
21           *qualifying cogeneration facility is used in a produc-*  
22           *tive and beneficial manner;*

23           “(ii) *the electrical, thermal, and chemical output*  
24           *of the cogeneration facility is used fundamentally for*  
25           *industrial, commercial, or institutional purposes and*

1        *is not intended fundamentally for sale to an electric*  
2        *utility, taking into account technological, efficiency,*  
3        *economic, and variable thermal energy requirements,*  
4        *as well as State laws applicable to sales of electric en-*  
5        *ergy from a qualifying facility to its host facility;*  
6        *and*

7                *“(iii) continuing progress in the development of*  
8        *efficient electric energy generating technology.*

9        *“(B) The rule issued pursuant to paragraph (1)(A) of*  
10        *this subsection shall be applicable only to facilities that*  
11        *seek to sell electric energy pursuant to section 210 of this*  
12        *Act. For all other purposes, except as specifically provided*  
13        *in subsection (m)(2)(A), qualifying facility status shall be*  
14        *determined in accordance with the rules and regulations of*  
15        *this Act.*

16        *“(2) Notwithstanding rule revisions under paragraph*  
17        *(1), the Commission’s criteria for qualifying cogeneration*  
18        *facilities in effect prior to the date on which the Commis-*  
19        *sion issues the final rule required by paragraph (1) shall*  
20        *continue to apply to any cogeneration facility that—*

21                *“(A) was a qualifying cogeneration facility on*  
22        *the date of enactment of subsection (m), or*

23                *“(B) had filed with the Commission a notice of*  
24        *self-certification, self-recertification or an application*  
25        *for Commission certification under 18 C.F.R. 292.207*

1       *prior to the date on which the Commission issues the*  
 2       *final rule required by paragraph (1).”.*

3       **(b) ELIMINATION OF OWNERSHIP LIMITATIONS.—**

4               **(1) QUALIFYING SMALL POWER PRODUCTION FA-**  
 5       **CILITY.—***Section 3(17)(C) of the Federal Power Act*  
 6       *(16 U.S.C. 796(17)(C)) is amended to read as follows:*

7               *“(C) ‘qualifying small power production fa-*  
 8               *cility’ means a small power production facility*  
 9               *that the Commission determines, by rule, meets*  
 10              *such requirements (including requirements re-*  
 11              *specting fuel use, fuel efficiency, and reliability)*  
 12              *as the Commission may, by rule, prescribe;”.*

13              **(2) QUALIFYING COGENERATION FACILITY.—***Sec-*  
 14       *tion 3(18)(B) of the Federal Power Act (16 U.S.C.*  
 15       *796(18)(B)) is amended to read as follows:*

16              *“(B) ‘qualifying cogeneration facility’*  
 17              *means a cogeneration facility that the Commis-*  
 18              *sion determines, by rule, meets such requirements*  
 19              *(including requirements respecting minimum*  
 20              *size, fuel use, and fuel efficiency) as the Commis-*  
 21              *sion may, by rule, prescribe;”.*

22       **SEC. 1254. INTERCONNECTION.**

23              **(a) ADOPTION OF STANDARDS.—***Section 111(d) of the*  
 24       *Public Utility Regulatory Policies Act of 1978 (16 U.S.C.*  
 25       *2621 (d) ) is amended by adding at the end the following:*

1           “(16) *INTERCONNECTION*.—Each electric utility  
2       shall make available, upon request, interconnection  
3       service to any electric consumer that the electric util-  
4       ity serves. For purposes of this paragraph, the term  
5       ‘interconnection service’ means service to an electric  
6       consumer under which an on-site generating facility  
7       on the consumer’s premises shall be connected to the  
8       local distribution facilities. Interconnection services  
9       shall be offered based upon the standards developed by  
10      the Institute of Electrical and Electronics Engineers:  
11      *IEEE Standard 1547 for Interconnecting Distributed*  
12      *Resources with Electric Power Systems*, as they may  
13      be amended from time to time. In addition, agree-  
14      ments and procedures shall be established whereby the  
15      services are offered shall promote current best prac-  
16      tices of interconnection for distributed generation, in-  
17      cluding but not limited to practices stipulated in  
18      model codes adopted by associations of state regu-  
19      latory agencies. All such agreements and procedures  
20      shall be just and reasonable, and not unduly dis-  
21      criminatory or preferential.”.

22      (b) *COMPLIANCE*.—

23           (1) *TIME LIMITATIONS*.—Section 112(b) of the  
24      *Public Utility Regulatory Policies Act of 1978* (16

1       *U.S.C. 2622(b)) is amended by adding at the end the*  
2       *following:*

3               “(5)(A) *Not later than one year after the enact-*  
4       *ment of this paragraph, each State regulatory author-*  
5       *ity (with respect to each electric utility for which it*  
6       *has ratemaking authority) and each nonregulated*  
7       *utility shall commence the consideration referred to in*  
8       *section 111, or set a hearing date for consideration,*  
9       *with respect to the standard established by paragraph*  
10       *(16) of section 111(d).*

11               “(B) *Not later than two years after the date of*  
12       *the enactment of the this paragraph, each State regu-*  
13       *latory authority (with respect to each electric utility*  
14       *for which it has ratemaking authority), and each*  
15       *nonregulated electric utility, shall complete the con-*  
16       *sideration, and shall make the determination, referred*  
17       *to in section 111 with respect to each standard estab-*  
18       *lished by paragraph (16) of section 111(d).”.*

19               (2) *FAILURE TO COMPLY.—Section 112 (d) of the*  
20       *Public Utility Regulatory Policies Act of 1978 (16*  
21       *U.S.C. 2622 (c)) is amended by adding at the end the*  
22       *following: “In the case of the standard established by*  
23       *paragraph (16), the reference contained in this sub-*  
24       *section to the date of enactment of this Act shall be*



1       *deemed to be a reference to the date of enactment of*  
 2       *paragraph (16).”.*

3               (3) *PRIOR STATE ACTIONS.*—

4                       (A) *IN GENERAL.*—*Section 112 of the Public*  
 5       *Utility Regulatory Policies Act of 1978 (16*  
 6       *U.S.C. 2622) is amended by adding at the end*  
 7       *the following:*

8       “(f) *PRIOR STATE ACTIONS.*—*Subsections (b) and (c)*  
 9       *of this section shall not apply to the standards established*  
 10       *by paragraph (16) of section 111(d) in the case of any elec-*  
 11       *tric utility in a State if, before the enactment of this sub-*  
 12       *section—*

13               “(1) *the State has implemented for such utility*  
 14       *the standard concerned (or a comparable standard);*

15               “(2) *the State regulatory authority for such*  
 16       *State or relevant nonregulated electric utility has con-*  
 17       *ducted a proceeding to consider implementation of the*  
 18       *standard concerned (or a comparable standard) for*  
 19       *such utility; or*

20               “(3) *the State legislature has voted on the imple-*  
 21       *mentation of such standard (or a comparable stand-*  
 22       *ard) for such utility.”.*

23               (B) *CROSS REFERENCE.*—*Section 124 of*  
 24       *such Act (16 U.S.C. 2634) is amended by adding*  
 25       *the following at the end thereof: “In the case of*

1        *each standard established by paragraph (16) of*  
 2        *section 111(d), the reference contained in this*  
 3        *subsection to the date of enactment of the Act*  
 4        *shall be deemed to be a reference to the date of*  
 5        *enactment of paragraph (16).”.*

## 6        ***Subtitle F—Repeal of PUHCA***

### 7        ***SEC. 1261. SHORT TITLE.***

8        *This subtitle may be cited as the “Public Utility Hold-*  
 9        *ing Company Act of 2005”.*

### 10       ***SEC. 1262. DEFINITIONS.***

11       *For purposes of this subtitle:*

12            (1) *AFFILIATE.—The term “affiliate” of a com-*  
 13        *pany means any company, 5 percent or more of the*  
 14        *outstanding voting securities of which are owned, con-*  
 15        *trolled, or held with power to vote, directly or indi-*  
 16        *rectly, by such company.*

17            (2) *ASSOCIATE COMPANY.—The term “associate*  
 18        *company” of a company means any company in the*  
 19        *same holding company system with such company.*

20            (3) *COMMISSION.—The term “Commission”*  
 21        *means the Federal Energy Regulatory Commission.*

22            (4) *COMPANY.—The term “company” means a*  
 23        *corporation, partnership, association, joint stock com-*  
 24        *pany, business trust, or any organized group of per-*

1        *sons, whether incorporated or not, or a receiver, trust-*  
2        *ee, or other liquidating agent of any of the foregoing.*

3            (5) *ELECTRIC UTILITY COMPANY.—The term*  
4        *“electric utility company” means any company that*  
5        *owns or operates facilities used for the generation,*  
6        *transmission, or distribution of electric energy for*  
7        *sale.*

8            (6) *EXEMPT WHOLESALE GENERATOR AND FOR-*  
9        *EIGN UTILITY COMPANY.—The terms “exempt whole-*  
10       *sale generator” and “foreign utility company” have*  
11       *the same meanings as in sections 32 and 33, respec-*  
12       *tively, of the Public Utility Holding Company Act of*  
13       *1935 (15 U.S.C. 79z–5a, 79z–5b), as those sections ex-*  
14       *isted on the day before the effective date of this sub-*  
15       *title.*

16           (7) *GAS UTILITY COMPANY.—The term “gas util-*  
17       *ity company” means any company that owns or op-*  
18       *erates facilities used for distribution at retail (other*  
19       *than the distribution only in enclosed portable con-*  
20       *tainers or distribution to tenants or employees of the*  
21       *company operating such facilities for their own use*  
22       *and not for resale) of natural or manufactured gas for*  
23       *heat, light, or power.*

24           (8) *HOLDING COMPANY.—The term “holding*  
25       *company” means—*

1           (A) any company that directly or indirectly  
2           owns, controls, or holds, with power to vote, 10  
3           percent or more of the outstanding voting securi-  
4           ties of a public-utility company or of a holding  
5           company of any public-utility company; and

6           (B) any person, determined by the Commis-  
7           sion, after notice and opportunity for hearing, to  
8           exercise directly or indirectly (either alone or  
9           pursuant to an arrangement or understanding  
10          with 1 or more persons) such a controlling influ-  
11          ence over the management or policies of any  
12          public-utility company or holding company as to  
13          make it necessary or appropriate for the rate  
14          protection of utility customers with respect to  
15          rates that such person be subject to the obliga-  
16          tions, duties, and liabilities imposed by this sub-  
17          title upon holding companies.

18          (9) *HOLDING COMPANY SYSTEM.*—The term  
19          “holding company system” means a holding com-  
20          pany, together with its subsidiary companies.

21          (10) *JURISDICTIONAL RATES.*—The term “juris-  
22          dictional rates” means rates accepted or established  
23          by the Commission for the transmission of electric en-  
24          ergy in interstate commerce, the sale of electric energy  
25          at wholesale in interstate commerce, the transpor-

1        *tation of natural gas in interstate commerce, and the*  
2        *sale in interstate commerce of natural gas for resale*  
3        *for ultimate public consumption for domestic, com-*  
4        *mercial, industrial, or any other use.*

5            (11) *NATURAL GAS COMPANY.*—*The term “nat-*  
6        *ural gas company” means a person engaged in the*  
7        *transportation of natural gas in interstate commerce*  
8        *or the sale of such gas in interstate commerce for re-*  
9        *sale.*

10           (12) *PERSON.*—*The term “person” means an in-*  
11        *dividual or company.*

12           (13) *PUBLIC UTILITY.*—*The term “public util-*  
13        *ity” means any person who owns or operates facilities*  
14        *used for transmission of electric energy in interstate*  
15        *commerce or sales of electric energy at wholesale in*  
16        *interstate commerce.*

17           (14) *PUBLIC-UTILITY COMPANY.*—*The term “pub-*  
18        *lic-utility company” means an electric utility com-*  
19        *pany or a gas utility company.*

20           (15) *STATE COMMISSION.*—*The term “State com-*  
21        *mission” means any commission, board, agency, or*  
22        *officer, by whatever name designated, of a State, mu-*  
23        *nicipality, or other political subdivision of a State*  
24        *that, under the laws of such State, has jurisdiction to*  
25        *regulate public utility companies.*

1           (16) *SUBSIDIARY COMPANY.*—*The term “sub-*  
2           *sidiary company” of a holding company means—*

3                     *(A) any company, 10 percent or more of the*  
4                     *outstanding voting securities of which are di-*  
5                     *rectly or indirectly owned, controlled, or held*  
6                     *with power to vote, by such holding company;*  
7                     *and*

8                     *(B) any person, the management or policies*  
9                     *of which the Commission, after notice and oppor-*  
10                    *tunity for hearing, determines to be subject to a*  
11                    *controlling influence, directly or indirectly, by*  
12                    *such holding company (either alone or pursuant*  
13                    *to an arrangement or understanding with 1 or*  
14                    *more other persons) so as to make it necessary*  
15                    *for the rate protection of utility customers with*  
16                    *respect to rates that such person be subject to the*  
17                    *obligations, duties, and liabilities imposed by*  
18                    *this subtitle upon subsidiary companies of hold-*  
19                    *ing companies.*

20           (17) *VOTING SECURITY.*—*The term “voting secu-*  
21           *urity” means any security presently entitling the*  
22           *owner or holder thereof to vote in the direction or*  
23           *management of the affairs of a company.*

1 **SEC. 1263. REPEAL OF THE PUBLIC UTILITY HOLDING COM-**  
2 **PANY ACT OF 1935.**

3 *The Public Utility Holding Company Act of 1935 (15*  
4 *U.S.C. 79 et seq.) is repealed.*

5 **SEC. 1264. FEDERAL ACCESS TO BOOKS AND RECORDS.**

6 (a) *IN GENERAL.*—Each holding company and each  
7 associate company thereof shall maintain, and shall make  
8 available to the Commission, such books, accounts, memo-  
9 randa, and other records as the Commission determines are  
10 relevant to costs incurred by a public utility or natural gas  
11 company that is an associate company of such holding com-  
12 pany and necessary or appropriate for the protection of  
13 utility customers with respect to jurisdictional rates.

14 (b) *AFFILIATE COMPANIES.*—Each affiliate of a hold-  
15 ing company or of any subsidiary company of a holding  
16 company shall maintain, and shall make available to the  
17 Commission, such books, accounts, memoranda, and other  
18 records with respect to any transaction with another affil-  
19 iate, as the Commission determines are relevant to costs in-  
20 curred by a public utility or natural gas company that is  
21 an associate company of such holding company and nec-  
22 essary or appropriate for the protection of utility customers  
23 with respect to jurisdictional rates.

24 (c) *HOLDING COMPANY SYSTEMS.*—The Commission  
25 may examine the books, accounts, memoranda, and other  
26 records of any company in a holding company system, or

1 *any affiliate thereof, as the Commission determines are rel-*  
 2 *evant to costs incurred by a public utility or natural gas*  
 3 *company within such holding company system and nec-*  
 4 *essary or appropriate for the protection of utility customers*  
 5 *with respect to jurisdictional rates.*

6 (d) *CONFIDENTIALITY.*—No member, officer, or em-  
 7 ployee of the Commission shall divulge any fact or informa-  
 8 tion that may come to his or her knowledge during the  
 9 course of examination of books, accounts, memoranda, or  
 10 other records as provided in this section, except as may be  
 11 directed by the Commission or by a court of competent ju-  
 12 risdiction.

13 **SEC. 1265. STATE ACCESS TO BOOKS AND RECORDS.**

14 (a) *IN GENERAL.*—Upon the written request of a State  
 15 commission having jurisdiction to regulate a public-utility  
 16 company in a holding company system, the holding com-  
 17 pany or any associate company or affiliate thereof, other  
 18 than such public-utility company, wherever located, shall  
 19 produce for inspection books, accounts, memoranda, and  
 20 other records that—

21 (1) *have been identified in reasonable detail in*  
 22 *a proceeding before the State commission;*

23 (2) *the State commission determines are relevant*  
 24 *to costs incurred by such public-utility company; and*



1           (3) are necessary for the effective discharge of the  
2           responsibilities of the State commission with respect  
3           to such proceeding.

4           (b) *LIMITATION.*—Subsection (a) does not apply to  
5           any person that is a holding company solely by reason of  
6           ownership of 1 or more qualifying facilities under the Pub-  
7           lic Utility Regulatory Policies Act of 1978 (16 U.S.C. 2601  
8           et seq.).

9           (c) *CONFIDENTIALITY OF INFORMATION.*—The produc-  
10          tion of books, accounts, memoranda, and other records  
11          under subsection (a) shall be subject to such terms and con-  
12          ditions as may be necessary and appropriate to safeguard  
13          against unwarranted disclosure to the public of any trade  
14          secrets or sensitive commercial information.

15          (d) *EFFECT ON STATE LAW.*—Nothing in this section  
16          shall preempt applicable State law concerning the provision  
17          of books, accounts, memoranda, and other records, or in any  
18          way limit the rights of any State to obtain books, accounts,  
19          memoranda, and other records under any other Federal  
20          law, contract, or otherwise.

21          (e) *COURT JURISDICTION.*—Any United States district  
22          court located in the State in which the State commission  
23          referred to in subsection (a) is located shall have jurisdic-  
24          tion to enforce compliance with this section.

1 **SEC. 1266. EXEMPTION AUTHORITY.**

2       (a) *RULEMAKING.*—Not later than 90 days after the  
3 effective date of this subtitle, the Commission shall issue a  
4 final rule to exempt from the requirements of section 1264  
5 (relating to Federal access to books and records) any person  
6 that is a holding company, solely with respect to 1 or  
7 more—

8               (1) *qualifying facilities under the Public Utility*  
9       *Regulatory Policies Act of 1978 (16 U.S.C. 2601 et*  
10       *seq.);*

11               (2) *exempt wholesale generators; or*

12               (3) *foreign utility companies.*

13       (b) *OTHER AUTHORITY.*—The Commission shall ex-  
14 empt a person or transaction from the requirements of sec-  
15 tion 1264 (relating to Federal access to books and records)  
16 if, upon application or upon the motion of the Commis-  
17 sion—

18               (1) *the Commission finds that the books, ac-*  
19       *counts, memoranda, and other records of any person*  
20       *are not relevant to the jurisdictional rates of a public*  
21       *utility or natural gas company; or*

22               (2) *the Commission finds that any class of trans-*  
23       *actions is not relevant to the jurisdictional rates of a*  
24       *public utility or natural gas company.*

1 **SEC. 1267. AFFILIATE TRANSACTIONS.**

2       (a) *COMMISSION AUTHORITY UNAFFECTED.*—Nothing  
 3 in this subtitle shall limit the authority of the Commission  
 4 under the Federal Power Act (16 U.S.C. 791a et seq.) to  
 5 require that jurisdictional rates are just and reasonable, in-  
 6 cluding the ability to deny or approve the pass through of  
 7 costs, the prevention of cross-subsidization, and the issuance  
 8 of such rules and regulations as are necessary or appro-  
 9 priate for the protection of utility consumers.

10       (b) *RECOVERY OF COSTS.*—Nothing in this subtitle  
 11 shall preclude the Commission or a State commission from  
 12 exercising its jurisdiction under otherwise applicable law  
 13 to determine whether a public-utility company, public util-  
 14 ity, or natural gas company may recover in rates any costs  
 15 of an activity performed by an associate company, or any  
 16 costs of goods or services acquired by such public-utility  
 17 company from an associate company.

18 **SEC. 1268. APPLICABILITY.**

19       *Except as otherwise specifically provided in this sub-*  
 20 *title, no provision of this subtitle shall apply to, or be*  
 21 *deemed to include—*

22               (1) *the United States;*

23               (2) *a State or any political subdivision of a*  
 24 *State;*

25               (3) *any foreign governmental authority not oper-*  
 26 *ating in the United States;*

1           (4) *any agency, authority, or instrumentality of*  
2           *any entity referred to in paragraph (1), (2), or (3);*  
3           *or*

4           (5) *any officer, agent, or employee of any entity*  
5           *referred to in paragraph (1), (2), (3), or (4) acting*  
6           *as such in the course of his or her official duty.*

7   **SEC. 1269. EFFECT ON OTHER REGULATIONS.**

8           *Nothing in this subtitle precludes the Commission or*  
9           *a State commission from exercising its jurisdiction under*  
10          *otherwise applicable law to protect utility customers.*

11   **SEC. 1270. ENFORCEMENT.**

12          *The Commission shall have the same powers as set*  
13          *forth in sections 306 through 317 of the Federal Power Act*  
14          *(16 U.S.C. 825e–825p) to enforce the provisions of this sub-*  
15          *title.*

16   **SEC. 1271. SAVINGS PROVISIONS.**

17          (a) *IN GENERAL.*—*Nothing in this subtitle, or other-*  
18          *wise in the Public Utility Holding Company Act of 1935,*  
19          *or rules, regulations, or orders thereunder, prohibits a per-*  
20          *son from engaging in or continuing to engage in activities*  
21          *or transactions in which it is legally engaged or authorized*  
22          *to engage on the date of enactment of this Act, if that person*  
23          *continues to comply with the terms (other than an expira-*  
24          *tion date or termination date) of any such authorization,*  
25          *whether by rule or by order.*

1       (b) *EFFECT ON OTHER COMMISSION AUTHORITY.*—  
 2       *Nothing in this subtitle limits the authority of the Commis-*  
 3       *sion under the Federal Power Act (16 U.S.C. 791a et seq.)*  
 4       *or the Natural Gas Act (15 U.S.C. 717 et seq.).*

5       **SEC. 1272. IMPLEMENTATION.**

6       *Not later than 12 months after the date of enactment*  
 7       *of this subtitle, the Commission shall—*

8               (1) *issue such regulations as may be necessary or*  
 9               *appropriate to implement this subtitle (other than*  
 10              *section 1265, relating to State access to books and*  
 11              *records); and*

12              (2) *submit to Congress detailed recommendations*  
 13              *on technical and conforming amendments to Federal*  
 14              *law necessary to carry out this subtitle and the*  
 15              *amendments made by this subtitle.*

16       **SEC. 1273. TRANSFER OF RESOURCES.**

17       *All books and records that relate primarily to the func-*  
 18       *tions transferred to the Commission under this subtitle shall*  
 19       *be transferred from the Securities and Exchange Commis-*  
 20       *sion to the Commission.*

21       **SEC. 1274. EFFECTIVE DATE.**

22       (a) *IN GENERAL.*—*Except for section 1272 (relating*  
 23       *to implementation), this subtitle shall take effect 12 months*  
 24       *after the date of enactment of this subtitle.*

1       (b) *COMPLIANCE WITH CERTAIN RULES.*—If the Com-  
 2 mission approves and makes effective any final rulemaking  
 3 modifying the standards of conduct governing entities that  
 4 own, operate, or control facilities for transmission of elec-  
 5 tricity in interstate commerce or transportation of natural  
 6 gas in interstate commerce prior to the effective date of this  
 7 subtitle, any action taken by a public-utility company or  
 8 utility holding company to comply with the requirements  
 9 of such rulemaking shall not subject such public-utility com-  
 10 pany or utility holding company to any regulatory require-  
 11 ment applicable to a holding company under the Public  
 12 Utility Holding Company Act of 1935 (15 U.S.C. 79 *et*  
 13 *seq.*).

14 **SEC. 1275. SERVICE ALLOCATION.**

15       (a) *FERC REVIEW.*—In the case of non-power goods  
 16 or administrative or management services provided by an  
 17 associate company organized specifically for the purpose of  
 18 providing such goods or services to any public utility in  
 19 the same holding company system, at the election of the sys-  
 20 tem or a State commission having jurisdiction over the pub-  
 21 lic utility, the Commission, after the effective date of this  
 22 subtitle, shall review and authorize the allocation of the  
 23 costs for such goods or services to the extent relevant to that  
 24 associate company in order to assure that each allocation

1 *is appropriate for the protection of investors and consumers*  
2 *of such public utility.*

3       (b) *COST ALLOCATION.*—*Nothing in this section shall*  
4 *preclude the Commission or a State commission from exer-*  
5 *cising its jurisdiction under other applicable law with re-*  
6 *spect to the review or authorization of any costs allocated*  
7 *to a public utility in a holding company system located*  
8 *in the affected State as a result of the acquisition of non-*  
9 *power goods or administrative and management services by*  
10 *such public utility from an associate company organized*  
11 *specifically for that purpose.*

12       (c) *RULES.*—*Not later than 6 months after the date*  
13 *of enactment of this Act, the Commission shall issue rules*  
14 *(which rules shall be effective no earlier than the effective*  
15 *date of this subtitle) to exempt from the requirements of*  
16 *this section any company in a holding company system*  
17 *whose public utility operations are confined substantially*  
18 *to a single State and any other class of transactions that*  
19 *the Commission finds is not relevant to the jurisdictional*  
20 *rates of a public utility.*

21       (d) *PUBLIC UTILITY.*—*As used in this section, the term*  
22 *“public utility” has the meaning given that term in section*  
23 *201(e) of the Federal Power Act.*

1 **SEC. 1276. AUTHORIZATION OF APPROPRIATIONS.**

2 *There are authorized to be appropriated such funds as*  
 3 *may be necessary to carry out this subtitle.*

4 **SEC. 1277. CONFORMING AMENDMENTS TO THE FEDERAL**  
 5 **POWER ACT.**

6 (a) *CONFLICT OF JURISDICTION.*—Section 318 of the  
 7 *Federal Power Act (16 U.S.C. 825q) is repealed.*

8 (b) *DEFINITIONS.*—(1) *Section 201(g)(5) of the Fed-*  
 9 *eral Power Act (16 U.S.C. 824(g)(5)) is amended by strik-*  
 10 *ing “1935” and inserting “2005”.*

11 (2) *Section 214 of the Federal Power Act (16 U.S.C.*  
 12 *824m) is amended by striking “1935” and inserting*  
 13 *“2005”.*

14 **Subtitle G—Market Transparency,**  
 15 **Enforcement, and Consumer**  
 16 **Protection**

17 **SEC. 1281. MARKET TRANSPARENCY RULES.**

18 *Part II of the Federal Power Act (16 U.S.C. 824 et*  
 19 *seq.) is amended by adding at the end the following:*

20 **“SEC. 220. MARKET TRANSPARENCY RULES.**

21 *“(a) IN GENERAL.*—Not later than 180 days after the  
 22 *date of enactment of this section, the Commission shall issue*  
 23 *rules establishing an electronic information system to pro-*  
 24 *vide the Commission and the public with access to such in-*  
 25 *formation as is necessary or appropriate to facilitate price*  
 26 *transparency and participation in markets subject to the*



1 *Commission’s jurisdiction under this Act. Such systems*  
2 *shall provide information about the availability and market*  
3 *price of wholesale electric energy and transmission services*  
4 *to the Commission, State commissions, buyers and sellers*  
5 *of wholesale electric energy, users of transmission services,*  
6 *and the public on a timely basis. The Commission shall*  
7 *have authority to obtain such information from any electric*  
8 *utility or transmitting utility, including any entity de-*  
9 *scribed in section 201(f).*

10       “(b) *EXEMPTIONS.—The Commission shall exempt*  
11 *from disclosure information it determines would, if dis-*  
12 *closed, be detrimental to the operation of an effective market*  
13 *or jeopardize system security. This section shall not apply*  
14 *to transactions for the purchase or sale of wholesale electric*  
15 *energy or transmission services within the area described*  
16 *in section 212(k)(2)(A). In determining the information to*  
17 *be made available under this section and time to make such*  
18 *information available, the Commission shall seek to ensure*  
19 *that consumers and competitive markets are protected from*  
20 *the adverse effects of potential collusion or other anti-com-*  
21 *petitive behaviors that can be facilitated by untimely public*  
22 *disclosure of transaction-specific information.*

23       “(c) *COMMODITY FUTURES TRADING COMMISSION.—*  
24 *This section shall not affect the exclusive jurisdiction of the*  
25 *Commodity Futures Trading Commission with respect to*

1 *accounts, agreements, contracts, or transactions in commod-*  
 2 *ities under the Commodity Exchange Act (7 U.S.C. 1 et*  
 3 *seq.).*

4 “(d) *SAVINGS PROVISION.—In exercising its authority*  
 5 *under this section, the Commission shall not—*

6 “(1) *compete with, or displace from the market*  
 7 *place, any price publisher; or*

8 “(2) *regulate price publishers or impose any re-*  
 9 *quirements on the publication of information.”.*

10 **SEC. 1282. MARKET MANIPULATION.**

11 *Part II of the Federal Power Act (16 U.S.C. 824 et*  
 12 *seq.) is amended by adding at the end the following:*

13 **“SEC. 221. PROHIBITION ON FILING FALSE INFORMATION.**

14 “No person or other entity (including an entity de-  
 15 scribed in section 201(f)) shall willfully and knowingly re-  
 16 port any information relating to the price of electricity sold  
 17 at wholesale or availability of transmission capacity, which  
 18 information the person or any other entity knew to be false  
 19 at the time of the reporting, to a Federal agency with intent  
 20 to fraudulently affect the data being compiled by such Fed-  
 21 eral agency.

22 **“SEC. 222. PROHIBITION ON ROUND TRIP TRADING.**

23 “(a) *PROHIBITION.—No person or other entity (includ-*  
 24 *ing an entity described in section 201(f)) shall willfully and*  
 25 *knowingly enter into any contract or other arrangement to*

1 *execute a ‘round trip trade’ for the purchase or sale of elec-*  
 2 *tric energy at wholesale.*

3 “(b) *DEFINITION.*—*For the purposes of this section, the*  
 4 *term ‘round trip trade’ means a transaction, or combina-*  
 5 *tion of transactions, in which a person or any other enti-*  
 6 *ty—*

7 “(1) *enters into a contract or other arrangement*  
 8 *to purchase from, or sell to, any other person or other*  
 9 *entity electric energy at wholesale;*

10 “(2) *simultaneously with entering into the con-*  
 11 *tract or arrangement described in paragraph (1), ar-*  
 12 *ranges a financially offsetting trade with such other*  
 13 *person or entity for the same such electric energy, at*  
 14 *the same location, price, quantity and terms so that,*  
 15 *collectively, the purchase and sale transactions in*  
 16 *themselves result in no financial gain or loss; and*

17 “(3) *enters into the contract or arrangement*  
 18 *with a specific intent to fraudulently affect reported*  
 19 *revenues, trading volumes, or prices.”.*

20 **SEC. 1283. ENFORCEMENT.**

21 (a) *COMPLAINTS.*—*Section 306 of the Federal Power*  
 22 *Act (16 U.S.C. 825e) is amended as follows:*

23 (1) *By inserting “electric utility,” after “Any*  
 24 *person,”.*

1           (2) *By inserting “, transmitting utility,” after*  
2           *“licensee” each place it appears.*

3           (b) *REVIEW OF COMMISSION ORDERS.—Section 313(a)*  
4           *of the Federal Power Act (16 U.S.C. 8251) is amended by*  
5           *inserting “electric utility,” after “person,” in the first 2*  
6           *places it appears and by striking “any person unless such*  
7           *person” and inserting “any entity unless such entity”.*

8           (c) *INVESTIGATIONS.—Section 307(a) of the Federal*  
9           *Power Act (16 U.S.C. 825f(a)) is amended as follows:*

10           (1) *By inserting “, electric utility, transmitting*  
11           *utility, or other entity” after “person” each time it*  
12           *appears.*

13           (2) *By striking the period at the end of the first*  
14           *sentence and inserting the following: “or in obtaining*  
15           *information about the sale of electric energy at whole-*  
16           *sale in interstate commerce and the transmission of*  
17           *electric energy in interstate commerce.”.*

18           (d) *CRIMINAL PENALTIES.—Section 316 of the Federal*  
19           *Power Act (16 U.S.C. 825o) is amended—*

20           (1) *in subsection (a), by striking “\$5,000” and*  
21           *inserting “\$1,000,000”, and by striking “two years”*  
22           *and inserting “5 years”;*

23           (2) *in subsection (b), by striking “\$500” and in-*  
24           *serting “\$25,000”; and*

25           (3) *by striking subsection (c).*

1       (e) *CIVIL PENALTIES.*—Section 316A of the Federal  
2   Power Act (16 U.S.C. 825o–1) is amended as follows:

3           (1) In subsections (a) and (b), by striking “sec-  
4       tion 211, 212, 213, or 214” each place it appears and  
5       inserting “Part II”.

6           (2) In subsection (b), by striking “\$10,000” and  
7       inserting “\$1,000,000”.

8   **SEC. 1284. REFUND EFFECTIVE DATE.**

9       Section 206(b) of the Federal Power Act (16 U.S.C.  
10   824e(b)) is amended as follows:

11           (1) By striking “the date 60 days after the filing  
12       of such complaint nor later than 5 months after the  
13       expiration of such 60-day period” in the second sen-  
14       tence and inserting “the date of the filing of such  
15       complaint nor later than 5 months after the filing of  
16       such complaint”.

17           (2) By striking “60 days after” in the third sen-  
18       tence and inserting “of”.

19           (3) By striking “expiration of such 60-day pe-  
20       riod” in the third sentence and inserting “publication  
21       date”.

22           (4) By striking the fifth sentence and inserting  
23       the following: “If no final decision is rendered by the  
24       conclusion of the 180-day period commencing upon  
25       initiation of a proceeding pursuant to this section,

1        *the Commission shall state the reasons why it has*  
2        *failed to do so and shall state its best estimate as to*  
3        *when it reasonably expects to make such decision.”.*

4    **SEC. 1285. REFUND AUTHORITY.**

5        *Section 206 of the Federal Power Act (16 U.S.C. 824e)*  
6        *is amended by adding the following new subsection at the*  
7        *end thereof:*

8            *“(e)(1) Except as provided in paragraph (2), if an en-*  
9        *tity described in section 201(f) voluntarily makes a short-*  
10       *term sale of electric energy and the sale violates Commission*  
11       *rules in effect at the time of the sale, such entity shall be*  
12       *subject to the Commission’s refund authority under this sec-*  
13       *tion with respect to such violation.*

14        *“(2) This section shall not apply to—*

15            *“(A) any entity that sells less than 8,000,000*  
16        *megawatt hours of electricity per year; or*

17            *“(B) any electric cooperative.*

18        *“(3) For purposes of this subsection, the term ‘short-*  
19       *term sale’ means an agreement for the sale of electric energy*  
20       *at wholesale in interstate commerce that is for a period of*  
21       *31 days or less (excluding monthly contracts subject to auto-*  
22       *matic renewal).*

23        *“(4) The Commission shall have refund authority*  
24       *under subsection (e)(1) with respect to a voluntary short-*  
25       *term sale of electric energy by the Bonneville Power Admin-*

1 *istration (in this section ‘Bonneville’) only if the sale is*  
 2 *at an unjust and unreasonable rate and, in that event, may*  
 3 *order a refund only for short-term sales made by Bonneville*  
 4 *at rates that are higher than the highest just and reasonable*  
 5 *rate charged by any other entity for a short-term sale of*  
 6 *electric energy in the same geographic market for the same,*  
 7 *or most nearly comparable, period as the sale by Bonneville.*

8       “(5) *With respect to any Federal power marketing*  
 9 *agency or the Tennessee Valley Authority, the Commission*  
 10 *shall not assert or exercise any regulatory authority or pow-*  
 11 *ers under subsection (e)(1) other than the ordering of re-*  
 12 *funds to achieve a just and reasonable rate.”.*

13 **SEC. 1286. SANCTITY OF CONTRACT.**

14       (a) *IN GENERAL.*—*The Federal Energy Regulatory*  
 15 *Commission (in this section, “the Commission”) shall have*  
 16 *no authority to abrogate or modify any provision of an exe-*  
 17 *cuted contract or executed contract amendment described in*  
 18 *subsection (b) that has been entered into or taken effect, ex-*  
 19 *cept upon a finding that failure to take such action would*  
 20 *be contrary to the public interest.*

21       (b) *LIMITATION.*—*Except as provided in subsection*  
 22 *(c), this section shall apply only to a contract or contract*  
 23 *amendment—*

24               (1) *executed on or after the date of enactment of*  
 25       *this Act; and*

1           (2) *entered into—*

2                   (A) *for the purchase or sale of electric en-*  
 3                   *ergy under section 205 of the Federal Power Act*  
 4                   *(16 U.S.C. 824d) where the seller has been au-*  
 5                   *thorized by the Commission to charge market-*  
 6                   *based rates; or*

7                   (B) *under section 4 of the Natural Gas Act*  
 8                   *(15 U.S.C. 717c) where the natural gas company*  
 9                   *has been authorized by the Commission to charge*  
 10                   *market-based rates for the service described in*  
 11                   *the contract.*

12           (c) *EXCLUSION.—This section shall not apply to an*  
 13           *executed contract or executed contract amendment that ex-*  
 14           *pressly provides for a standard of review other than the*  
 15           *public interest standard.*

16           (d) *SAVINGS PROVISION.—With respect to contracts to*  
 17           *which this section does not apply, nothing in this section*  
 18           *alters existing law regarding the applicable standard of re-*  
 19           *view for a contract subject to the jurisdiction of the Com-*  
 20           *mission.*

21   **SEC. 1287. CONSUMER PRIVACY AND UNFAIR TRADE PRAC-**  
 22                   **TICES.**

23           (a) *PRIVACY.—The Federal Trade Commission may*  
 24           *issue rules protecting the privacy of electric consumers from*  
 25           *the disclosure of consumer information obtained in connec-*



1 tion with the sale or delivery of electric energy to electric  
2 consumers.

3 (b) *SLAMMING*.—The Federal Trade Commission may  
4 issue rules prohibiting the change of selection of an electric  
5 utility except with the informed consent of the electric con-  
6 sumer or if approved by the appropriate State regulatory  
7 authority.

8 (c) *CRAMMING*.—The Federal Trade Commission may  
9 issue rules prohibiting the sale of goods and services to an  
10 electric consumer unless expressly authorized by law or the  
11 electric consumer.

12 (d) *RULEMAKING*.—The Federal Trade Commission  
13 shall proceed in accordance with section 553 of title 5,  
14 United States Code, when prescribing a rule under this sec-  
15 tion.

16 (e) *STATE AUTHORITY*.—If the Federal Trade Com-  
17 mission determines that a State's regulations provide equiv-  
18 alent or greater protection than the provisions of this sec-  
19 tion, such State regulations shall apply in that State in  
20 lieu of the regulations issued by the Commission under this  
21 section.

22 (f) *DEFINITIONS*.—For purposes of this section:

23 (1) *STATE REGULATORY AUTHORITY*.—The term  
24 “State regulatory authority” has the meaning given

1        *that term in section 3(21) of the Federal Power Act*  
 2        *(16 U.S.C. 796(21)).*

3            (2) *ELECTRIC CONSUMER AND ELECTRIC UTIL-*  
 4        *ITY.—The terms “electric consumer” and “electric*  
 5        *utility” have the meanings given those terms in sec-*  
 6        *tion 3 of the Public Utility Regulatory Policies Act*  
 7        *of 1978 (16 U.S.C. 2602).*

## 8            ***Subtitle H—Merger Reform***

### 9        ***SEC. 1291. MERGER REVIEW REFORM AND ACCOUNT-*** 10        ***ABILITY.***

11        (a) *MERGER REVIEW REFORM.—Within 180 days*  
 12        *after the date of enactment of this Act, the Secretary of En-*  
 13        *ergy, in consultation with the Federal Energy Regulatory*  
 14        *Commission and the Attorney General of the United States,*  
 15        *shall prepare, and transmit to Congress each of the fol-*  
 16        *lowing:*

17            (1) *A study of the extent to which the authorities*  
 18        *vested in the Federal Energy Regulatory Commission*  
 19        *under section 203 of the Federal Power Act are dupli-*  
 20        *cative of authorities vested in—*

21            (A) *other agencies of Federal and State*  
 22        *Government; and*

23            (B) *the Federal Energy Regulatory Com-*  
 24        *mission, including under sections 205 and 206 of*  
 25        *the Federal Power Act.*

1           (2) *Recommendations on reforms to the Federal*  
2           *Power Act that would eliminate any unnecessary du-*  
3           *plication in the exercise of regulatory authority or*  
4           *unnecessary delays in the approval (or disapproval)*  
5           *of applications for the sale, lease, or other disposition*  
6           *of public utility facilities.*

7           (b) *MERGER REVIEW ACCOUNTABILITY.*—*Not later*  
8           *than 1 year after the date of enactment of this Act and*  
9           *annually thereafter, with respect to all orders issued within*  
10          *the preceding year that impose a condition on a sale, lease,*  
11          *or other disposition of public utility facilities under section*  
12          *203(b) of the Federal Power Act, the Federal Energy Regu-*  
13          *latory Commission shall transmit a report to Congress ex-*  
14          *plaining each of the following:*

15               (1) *The condition imposed.*

16               (2) *Whether the Commission could have imposed*  
17               *such condition by exercising its authority under any*  
18               *provision of the Federal Power Act other than under*  
19               *section 203(b).*

20               (3) *If the Commission could not have imposed*  
21               *such condition other than under section 203(b), why*  
22               *the Commission determined that such condition was*  
23               *consistent with the public interest.*

1 **SEC. 1292. ELECTRIC UTILITY MERGERS.**

2 (a) *AMENDMENT.*—Section 203(a) of the Federal  
3 Power Act (16 U.S.C. 824b(a)) is amended to read as fol-  
4 lows:

5 “(a)(1) No public utility shall, without first having se-  
6 cured an order of the Commission authorizing it to do so—

7 “(A) sell, lease, or otherwise dispose of the whole  
8 of its facilities subject to the jurisdiction of the Com-  
9 mission, or any part thereof of a value in excess of  
10 \$10,000,000;

11 “(B) merge or consolidate, directly or indirectly,  
12 such facilities or any part thereof with those of any  
13 other person, by any means whatsoever; or

14 “(C) purchase, acquire, or take any security with  
15 a value in excess of \$10,000,000 of any other public  
16 utility.

17 “(2) No holding company in a holding company sys-  
18 tem that includes a public utility shall purchase, acquire,  
19 or take any security with a value in excess of \$10,000,000  
20 of, or, by any means whatsoever, directly or indirectly,  
21 merge or consolidate with, a public utility or a holding  
22 company in a holding company system that includes a pub-  
23 lic utility with a value in excess of \$10,000,000 without  
24 first having secured an order of the Commission authorizing  
25 it to do so.

1       “(3) Upon receipt of an application for such approval  
2 the Commission shall give reasonable notice in writing to  
3 the Governor and State commission of each of the States  
4 in which the physical property affected, or any part thereof,  
5 is situated, and to such other persons as it may deem advis-  
6 able.

7       “(4) After notice and opportunity for hearing, the  
8 Commission shall approve the proposed disposition, consoli-  
9 dation, acquisition, or change in control, if it finds that  
10 the proposed transaction will be consistent with the public  
11 interest. In evaluating whether a transaction will be con-  
12 sistent with the public interest, the Commission shall con-  
13 sider whether the proposed transaction—

14               “(A) will adequately protect consumer interests;

15               “(B) will be consistent with competitive whole-  
16 sale markets;

17               “(C) will impair the financial integrity of any  
18 public utility that is a party to the transaction or an  
19 associate company of any party to the transaction;  
20 and

21               “(D) satisfies such other criteria as the Commis-  
22 sion considers consistent with the public interest.

23       “(5) The Commission shall, by rule, adopt procedures  
24 for the expeditious consideration of applications for the ap-  
25 proval of dispositions, consolidations, or acquisitions under

1 *this section. Such rules shall identify classes of transactions,*  
2 *or specify criteria for transactions, that normally meet the*  
3 *standards established in paragraph (4). The Commission*  
4 *shall provide expedited review for such transactions. The*  
5 *Commission shall grant or deny any other application for*  
6 *approval of a transaction not later than 180 days after the*  
7 *application is filed. If the Commission does not act within*  
8 *180 days, such application shall be deemed granted unless*  
9 *the Commission finds, based on good cause, that further*  
10 *consideration is required to determine whether the proposed*  
11 *transaction meets the standards of paragraph (4) and issues*  
12 *an order tolling the time for acting on the application for*  
13 *not more than 180 days, at the end of which additional*  
14 *period the Commission shall grant or deny the application.*

15       “(6) *For purposes of this subsection, the terms ‘asso-*  
16 *ciate company’, ‘holding company’, and ‘holding company*  
17 *system’ have the meaning given those terms in the Public*  
18 *Utility Holding Company Act of 2005.’.*

19       **(b) EFFECTIVE DATE.**—*The amendments made by this*  
20 *section shall take effect 12 months after the date of enact-*  
21 *ment of this section.*

## ***Subtitle I—Definitions***

### ***SEC. 1295. DEFINITIONS.***

(a) *ELECTRIC UTILITY*.—Section 3(22) of the Federal Power Act (16 U.S.C. 796(22)) is amended to read as follows:

“(22) *ELECTRIC UTILITY*.—The term ‘electric utility’ means any person or Federal or State agency (including any entity described in section 201(f)) that sells electric energy; such term includes the Tennessee Valley Authority and each Federal power marketing administration.”.

(b) *TRANSMITTING UTILITY*.—Section 3(23) of the Federal Power Act (16 U.S.C. 796(23)) is amended to read as follows:

“(23) *TRANSMITTING UTILITY*.—The term ‘transmitting utility’ means an entity, including any entity described in section 201(f), that owns, operates, or controls facilities used for the transmission of electric energy—

“(A) in interstate commerce; or

“(B) for the sale of electric energy at wholesale.”.

(c) *ADDITIONAL DEFINITIONS*.—Section 3 of the Federal Power Act (16 U.S.C. 796) is amended by adding at the end the following:

1           “(26) *ELECTRIC COOPERATIVE*.—The term ‘elec-  
2       *tric cooperative*’ means a cooperatively owned electric  
3       *utility*.

4           “(27) *RTO*.—The term ‘*Regional Transmission*  
5       *Organization*’ or ‘*RTO*’ means an entity of sufficient  
6       *regional scope* approved by the Commission to exer-  
7       *cise operational or functional control* of facilities used  
8       *for the transmission of electric energy in interstate*  
9       *commerce and to ensure nondiscriminatory access to*  
10       *such facilities*.

11          “(28) *ISO*.—The term ‘*Independent System Op-*  
12       *erator*’ or ‘*ISO*’ means an entity approved by the  
13       *Commission to exercise operational or functional con-*  
14       *trol of facilities used for the transmission of electric*  
15       *energy in interstate commerce and to ensure non-*  
16       *discriminatory access to such facilities.*”.

17       (d) *COMMISSION*.—For the purposes of this title, the  
18       term “*Commission*” means the *Federal Energy Regulatory*  
19       *Commission*.

20       (e) *APPLICABILITY*.—Section 201(f) of the *Federal*  
21       *Power Act* (16 U.S.C. 824(f)) is amended by adding after  
22       “*political subdivision of a state,*” the following: “*an electric*  
23       *cooperative that has financing under the Rural Electrifica-*  
24       *tion Act of 1936* (7 U.S.C. 901 et seq.) or that sells less  
25       than 4,000,000 megawatt hours of electricity per year,”.



***Subtitle J—Technical and  
Conforming Amendments***

***SEC. 1297. CONFORMING AMENDMENTS.***

*The Federal Power Act is amended as follows:*

*(1) Section 201(b)(2) of such Act (16 U.S.C. 824(b)(2)) is amended as follows:*

*(A) In the first sentence by striking “210, 211, and 212” and inserting “203(a)(2), 206(e), 210, 211, 211A, 212, 215, 216, 217, 218, 219, 220, 221, and 222”.*

*(B) In the second sentence by striking “210 or 211” and inserting “203(a)(2), 206(e), 210, 211, 211A, 212, 215, 216, 217, 218, 219, 220, 221, and 222”.*

*(C) Section 201(b)(2) of such Act is amended by striking “The” in the first place it appears and inserting “Notwithstanding section 201(f), the” and in the second sentence after “any order” by inserting “or rule”.*

*(2) Section 201(e) of such Act is amended by striking “210, 211, or 212” and inserting “206(e), 206(f), 210, 211, 211A, 212, 215, 216, 217, 218, 219, 220, 221, and 222”.*

*(3) Section 206 of such Act (16 U.S.C. 824e) is amended as follows:*

1           (A) *In subsection (b), in the seventh sen-*  
 2           *tence, by striking “the public utility to make”.*

3           (B) *In the first sentence of subsection (a),*  
 4           *by striking “hearing had” and inserting “hear-*  
 5           *ing held”.*

6           (4) *Section 211(c) of such Act (16 U.S.C.*  
 7           *824j(c)) is amended by—*

8           (A) *striking “(2)”;*

9           (B) *striking “(A)” and inserting “(1)”*

10          (C) *striking “(B)” and inserting “(2)”;* *and*

11          (D) *striking “termination of modification”*  
 12          *and inserting “termination or modification”.*

13          (5) *Section 211(d)(1) of such Act (16 U.S.C.*  
 14          *824j(d)(1)) is amended by striking “electric utility”*  
 15          *the second time it appears and inserting “transmit-*  
 16          *ting utility”.*

17          (6) *Section 315 (c) of such Act (16 U.S.C.*  
 18          *825n(c)) is amended by striking “subsection” and in-*  
 19          *serting “section”.*

## 20       ***Subtitle K—Economic Dispatch***

### 21       ***SEC. 1298. ECONOMIC DISPATCH.***

22       *Part II of the Federal Power Act (16 U.S.C. 824 et*  
 23       *seq.) is amended by adding at the end the following:*

1 **“SEC. 223. JOINT BOARD ON ECONOMIC DISPATCH.**

2       “(a) *IN GENERAL.*—*The Commission shall convene a*  
 3 *joint board pursuant to section 209 of this Act to study*  
 4 *the issue of security constrained economic dispatch for a*  
 5 *market region.*

6       “(b) *MEMBERSHIP.*—*The Commission shall request*  
 7 *each State to nominate a representative for such joint*  
 8 *board.*

9       “(c) *POWERS.*—*The board’s sole authority shall be to*  
 10 *consider issues relevant to what constitutes ‘security con-*  
 11 *strained economic dispatch’ and how such a mode of oper-*  
 12 *ating an electric energy system affects or enhances the reli-*  
 13 *ability and affordability of service to customers.*

14       “(d) *REPORT TO THE CONGRESS.*—*The board shall*  
 15 *issue a report on these matters within one year of enactment*  
 16 *of this section, including any consensus recommendations*  
 17 *for statutory or regulatory reform.”.*

18       **TITLE XIV—MISCELLANEOUS**

19       **Subtitle C—Other Provisions**

20       **SEC. 1441. CONTINUATION OF TRANSMISSION SECURITY**

21       **ORDER.**

22       *Department of Energy Order No. 202–03–2, issued by*  
 23 *the Secretary of Energy on August 28, 2003, shall remain*  
 24 *in effect unless rescinded by Federal statute.*

1 **SEC. 1442. REVIEW OF AGENCY DETERMINATIONS.**

2 *Section 7 of the Natural Gas Act (15 U.S.C. 717f) is*  
3 *amended by adding at the end the following:*

4 *“(i)(1) The United States Court of Appeals for the Dis-*  
5 *trict of Columbia Circuit shall have original and exclusive*  
6 *jurisdiction over any civil action—*

7 *“(A) for review of any order or action of any*  
8 *Federal or State administrative agency or officer to*  
9 *issue, condition, or deny any permit, license, concur-*  
10 *rence, or approval issued under authority of any Fed-*  
11 *eral law, other than the Coastal Zone Management*  
12 *Act of 1972 (16 U.S.C. 1451 et seq.), required for the*  
13 *construction of a natural gas pipeline for which a*  
14 *certificate of public convenience and necessity is*  
15 *issued by the Commission under this section;*

16 *“(B) alleging unreasonable delay by any Federal*  
17 *or State administrative agency or officer in entering*  
18 *an order or taking other action described in subpara-*  
19 *graph (A); or*

20 *“(C) challenging any decision made or action*  
21 *taken under this subsection.*

22 *“(2)(A) If the Court finds that the order, action, or*  
23 *failure to act is not consistent with the public convenience*  
24 *and necessity (as determined by the Commission under this*  
25 *section), or would prevent the construction and operation*  
26 *of natural gas facilities authorized by the certificate of pub-*

1 *lic convenience and necessity, the permit, license, concur-*  
2 *rence, or approval that is the subject of the order, action,*  
3 *or failure to act shall be deemed to have been issued subject*  
4 *to any conditions set forth in the reviewed order or action*  
5 *that the Court finds to be consistent with the public conven-*  
6 *ience and necessity.*

7       “(B) For purposes of paragraph (1)(B), the failure of  
8 an agency or officer to issue any such permit, license, con-  
9 currence, or approval within the later of 1 year after the  
10 date of filing of an application for the permit, license, con-  
11 currence, or approval or 60 days after the date of issuance  
12 of the certificate of public convenience and necessity under  
13 this section, shall be considered to be unreasonable delay  
14 unless the Court, for good cause shown, determines other-  
15 wise.

16       “(C) The Court shall set any action brought under  
17 paragraph (1) for expedited consideration.”.

18 **SEC. 1443. ATTAINMENT DATES FOR DOWNWIND OZONE**  
19 **NONATTAINMENT AREAS.**

20       Section 181 of the Clean Air Act (42 U.S.C.7511) is  
21 amended by adding the following new subsection at the end  
22 thereof:

23       “(d) *EXTENDED ATTAINMENT DATE FOR CERTAIN*  
24 *DOWNWIND AREAS.—*

1           “(1) *DEFINITIONS.—(A) The term ‘upwind area’*  
2           *means an area that—*

3                     “(i) *significantly contributes to nonattain-*  
4                     *ment in another area, hereinafter referred to as*  
5                     *a ‘downwind area’; and*

6                     “(ii) *is either—*

7                             “(I) *a nonattainment area with a later*  
8                             *attainment date than the downwind area,*  
9                             *or*

10                            “(II) *an area in another State that the*  
11                            *Administrator has found to be significantly*  
12                            *contributing to nonattainment in the down-*  
13                            *wind area in violation of section*  
14                            *110(a)(2)(D) and for which the Adminis-*  
15                            *trator has established requirements through*  
16                            *notice and comment rulemaking to elimi-*  
17                            *nate the emissions causing such significant*  
18                            *contribution.*

19                     “(B) *The term ‘current classification’ means the*  
20                     *classification of a downwind area under this section*  
21                     *at the time of the determination under paragraph (2).*

22           “(2) *EXTENSION.—If the Administrator—*

23                     “(A) *determines that any area is a down-*  
24                     *wind area with respect to a particular national*  
25                     *ambient air quality standard for ozone; and*

1           “(B) approves a plan revision for such area  
2           as provided in paragraph (3) prior to a reclassi-  
3           fication under subsection (b)(2)(A),  
4           the Administrator, in lieu of such reclassification,  
5           shall extend the attainment date for such downwind  
6           area for such standard in accordance with paragraph  
7           (5).

8           “(3) *REQUIRED APPROVAL.*—In order to extend  
9           the attainment date for a downwind area under this  
10          subsection, the Administrator must approve a revision  
11          of the applicable implementation plan for the down-  
12          wind area for such standard that—

13               “(A) complies with all requirements of this  
14               Act applicable under the current classification of  
15               the downwind area, including any requirements  
16               applicable to the area under section 172(c) for  
17               such standard; and

18               “(B) includes any additional measures  
19               needed to demonstrate attainment by the ex-  
20               tended attainment date provided under this sub-  
21               section.

22           “(4) *PRIOR RECLASSIFICATION DETERMINA-*  
23          *TION.*—If, no more than 18 months prior to the date  
24          of enactment of this subsection, the Administrator  
25          made a reclassification determination under sub-

1        *section (b)(2)(A) for any downwind area, and the Ad-*  
2        *ministrator approves the plan revision referred to in*  
3        *paragraph (3) for such area within 12 months after*  
4        *the date of enactment of this subsection, the reclassi-*  
5        *fication shall be withdrawn and the attainment date*  
6        *extended in accordance with paragraph (5) upon such*  
7        *approval. The Administrator shall also withdraw a*  
8        *reclassification determination under subsection*  
9        *(b)(2)(A) made after the date of enactment of this*  
10       *subsection and extend the attainment date in accord-*  
11       *ance with paragraph (5) if the Administrator ap-*  
12       *proves the plan revision referred to in paragraph (3)*  
13       *within 12 months of the date the reclassification de-*  
14       *termination under subsection (b)(2)(A) is issued. In*  
15       *such instances the ‘current classification’ used for*  
16       *evaluating the revision of the applicable implementa-*  
17       *tion plan under paragraph (3) shall be the classifica-*  
18       *tion of the downwind area under this section imme-*  
19       *diately prior to such reclassification.*

20            *“(5) EXTENDED DATE.—The attainment date ex-*  
21        *tended under this subsection shall provide for attain-*  
22        *ment of such national ambient air quality standard*  
23        *for ozone in the downwind area as expeditiously as*  
24        *practicable but no later than the date on which the*  
25        *last reductions in pollution transport necessary for*



1        *attainment in the downwind area are required to be*  
2        *achieved by the upwind area or areas.”.*

3        **SEC. 1444. ENERGY PRODUCTION INCENTIVES.**

4        (a) *IN GENERAL.*—A State may provide to any enti-  
5        *ty—*

6                (1) *a credit against any tax or fee owed to the*  
7        *State under a State law, or*

8                (2) *any other tax incentive,*  
9        *determined by the State to be appropriate, in the amount*  
10        *calculated under and in accordance with a formula deter-*  
11        *mined by the State, for production described in subsection*  
12        (b) *in the State by the entity that receives such credit or*  
13        *such incentive.*

14        (b) *ELIGIBLE ENTITIES.*—Subsection (a) shall apply  
15        *with respect to the production in the State of—*

16                (1) *electricity from coal mined in the State and*  
17        *used in a facility, if such production meets all appli-*  
18        *cable Federal and State laws and if such facility uses*  
19        *scrubbers or other forms of clean coal technology,*

20                (2) *electricity from a renewable source such as*  
21        *wind, solar, or biomass, or*

22                (3) *ethanol.*

23        (c) *EFFECT ON INTERSTATE COMMERCE.*—Any action  
24        *taken by a State in accordance with this section with re-*  
25        *spect to a tax or fee payable, or incentive applicable, for*

1 *any period beginning after the date of the enactment of this*  
 2 *Act shall—*

3 *(1) be considered to be a reasonable regulation of*  
 4 *commerce; and*

5 *(2) not be considered to impose an undue burden*  
 6 *on interstate commerce or to otherwise impair, re-*  
 7 *strain, or discriminate, against interstate commerce.*

8 **SEC. 1446. REGULATION OF CERTAIN OIL USED IN TRANS-**  
 9 **FORMERS.**

10 *Notwithstanding any other provision of law, or rule*  
 11 *promulgated by the Environmental Protection Agency, veg-*  
 12 *etable oil made from soybeans and used in electric trans-*  
 13 *formers as thermal insulation shall not be regulated as an*  
 14 *oil as defined under section 2(a)(1)(A) of the Edible Oil*  
 15 *Regulatory Reform Act (33 U.S.C. 2720(a)(1)(A)).*

16 **SEC. 1447. RISK ASSESSMENTS.**

17 *Subtitle B of title XXX of the Energy Policy Act of*  
 18 *1992 is amended by adding at the end the following new*  
 19 *section:*

20 **“SEC. 3022. RISK ASSESSMENT.**

21 *“Federal agencies conducting assessments of risks to*  
 22 *human health and the environment from energy technology,*  
 23 *production, transport, transmission, distribution, storage,*  
 24 *use, or conservation activities shall use sound and objective*  
 25 *scientific practices in assessing such risks, shall consider the*

1 *best available science (including peer reviewed studies), and*  
2 *shall include a description of the weight of the scientific*  
3 *evidence concerning such risks.”.*

4 **SEC. 1448. OXYGEN-FUEL.**

5       (a) *PROGRAM.—The Secretary of Energy shall estab-*  
6 *lish a program on oxygen-fuel systems. If feasible, the pro-*  
7 *gram shall include renovation of at least one existing large*  
8 *unit and one existing small unit, and construction of one*  
9 *new large unit and one new small unit. Cost sharing shall*  
10 *not be required.*

11       (b) *AUTHORIZATION OF APPROPRIATIONS.—There are*  
12 *authorized to be appropriated to the Secretary for carrying*  
13 *out this section—*

14               (1) *\$100,000,000 for fiscal year 2006;*

15               (2) *\$100,000,000 for fiscal year 2007; and*

16               (3) *\$100,000,000 for fiscal year 2008.*

17       (c) *DEFINITIONS.—For purposes of this section—*

18               (1) *the term “large unit” means a unit with a*  
19 *generating capacity of 100 megawatts or more;*

20               (2) *the term “oxygen-fuel systems” means sys-*  
21 *tems that utilize fuel efficiency benefits of oil, gas,*  
22 *coal, and biomass combustion using substantially*  
23 *pure oxygen, with high flame temperatures and the*  
24 *exclusion of air from the boiler, in industrial or elec-*  
25 *tric utility steam generating units; and*

1           (3) the term “small unit” means a unit with a  
2           generating capacity in the 10–50 megawatt range.

3   **SEC. 1449. PETROCHEMICAL AND OIL REFINERY FACILITY**  
4           **HEALTH ASSESSMENT.**

5           (a) *ESTABLISHMENT.*—The Secretary of Energy shall  
6           conduct a study of direct and significant health impacts  
7           to persons resulting from living in proximity to petro-  
8           chemical and oil refinery facilities. The Secretary shall con-  
9           sult with the Director of the National Cancer Institute and  
10          other Federal Government bodies with expertise in the field  
11          it deems appropriate in the design of such study. The study  
12          shall be conducted according to sound and objective sci-  
13          entific practices and present the weight of the scientific evi-  
14          dence. The Secretary shall obtain scientific peer review of  
15          the draft study.

16          (b) *REPORT TO CONGRESS.*—The Secretary shall  
17          transmit the results of the study to Congress within 6  
18          months of the enactment of this section.

19          (c) *AUTHORIZATION OF APPROPRIATIONS.*—There are  
20          authorized to be appropriated to the Secretary for activities  
21          under this section such sums as are necessary for the com-  
22          pletion of the study.

1           ***TITLE XV—ETHANOL AND***  
2                   ***MOTOR FUELS***  
3           ***Subtitle A—General Provisions***

4   ***SEC. 1501. RENEWABLE CONTENT OF MOTOR VEHICLE***  
5                   ***FUEL.***

6           *(a) IN GENERAL.—Section 211 of the Clean Air Act*  
7   *(42 U.S.C. 7545) is amended—*

8                   *(1) by redesignating subsection (o) as subsection*  
9           *(q); and*

10                  *(2) by inserting after subsection (n) the fol-*  
11   *lowing:*

12           *“(o) RENEWABLE FUEL PROGRAM.—*

13                  *“(1) DEFINITIONS.—In this section:*

14                    *“(A) ETHANOL.—(i) The term ‘cellulosic*  
15                    *biomass ethanol’ means ethanol derived from any*  
16                    *lignocellulosic or hemicellulosic matter that is*  
17                    *available on a renewable or recurring basis, in-*  
18                    *cluding—*

19                            *“(I) dedicated energy crops and trees;*

20                            *“(II) wood and wood residues;*

21                            *“(III) plants;*

22                            *“(IV) grasses;*

23                            *“(V) agricultural residues; and*

24                            *“(VI) fibers.*

1           “(ii) The term ‘waste derived ethanol’  
2           means ethanol derived from—

3                   “(I) animal wastes, including poultry  
4                   fats and poultry wastes, and other waste  
5                   materials; or

6                   “(II) municipal solid waste.

7           “(B) RENEWABLE FUEL.—

8                   “(i) IN GENERAL.—The term ‘renew-  
9                   able fuel’ means motor vehicle fuel that—

10                           “(I)(aa) is produced from grain,  
11                           starch, oilseeds, or other biomass; or

12                           “(bb) is natural gas produced  
13                           from a biogas source, including a land-  
14                           fill, sewage waste treatment plant,  
15                           feedlot, or other place where decaying  
16                           organic material is found; and

17                           “(II) is used to replace or reduce  
18                           the quantity of fossil fuel present in a  
19                           fuel mixture used to operate a motor  
20                           vehicle.

21                   “(ii) INCLUSION.—The term ‘renewable  
22                   fuel’ includes cellulosic biomass ethanol,  
23                   waste derived ethanol, and biodiesel (as de-  
24                   fined in section 312(f) of the Energy Policy  
25                   Act of 1992 (42 U.S.C. 13220(f)) and any

1           *blending components derived from renew-*  
2           *able fuel (provided that only the renewable*  
3           *fuel portion of any such blending compo-*  
4           *nent shall be considered part of the applica-*  
5           *ble volume under the renewable fuel pro-*  
6           *gram established by this subsection).*

7           “(C) *SMALL REFINERY.*—*The term ‘small*  
8           *refinery’ means a refinery for which average ag-*  
9           *gregate daily crude oil throughput for the cal-*  
10          *endar year (as determined by dividing the aggre-*  
11          *gate throughput for the calendar year by the*  
12          *number of days in the calendar year) does not*  
13          *exceed 75,000 barrels.*

14          “(2) *RENEWABLE FUEL PROGRAM.*—

15               “(A) *IN GENERAL.*—*Not later than 1 year*  
16               *after the enactment of this subsection, the Ad-*  
17               *ministrator shall promulgate regulations ensur-*  
18               *ing that motor vehicle fuel sold or dispensed to*  
19               *consumers in the contiguous United States, on*  
20               *an annual average basis, contains the applicable*  
21               *volume of renewable fuel as specified in subpara-*  
22               *graph (B). Regardless of the date of promulga-*  
23               *tion, such regulations shall contain compliance*  
24               *provisions for refiners, blenders, and importers,*  
25               *as appropriate, to ensure that the requirements*

of this section are met, but shall not restrict where renewable fuel can be used, or impose any per-gallon obligation for the use of renewable fuel. If the Administrator does not promulgate such regulations, the applicable percentage referred to in paragraph (4), on a volume percentage of gasoline basis, shall be 2.2 in 2005.

“(B) *APPLICABLE VOLUME.*—

“(i) *CALENDAR YEARS 2005 THROUGH 2012.*—For the purpose of subparagraph (A), the applicable volume for any of calendar years 2005 through 2012 shall be determined in accordance with the following table:

<b>“Calendar year</b>	<b>Applicable volume of renewable fuel (in billions of gallons)</b>
2005 .....	3.1
2006 .....	3.3
2007 .....	3.5
2008 .....	3.8
2009 .....	4.1
2010 .....	4.4
2011 .....	4.7
2012 .....	5.0

“(ii) *CALENDAR YEAR 2013 AND THEREAFTER.*—For the purpose of subparagraph (A), the applicable volume for calendar year 2013 and each calendar year thereafter shall be equal to the product obtained by multiplying—



1                   “(I) the number of gallons of gaso-  
2                   line that the Administrator estimates  
3                   will be sold or introduced into com-  
4                   merce in the calendar year; and

5                   “(II) the ratio that—

6                   “(aa) 5.0 billion gallons of  
7                   renewable fuels; bears to

8                   “(bb) the number of gallons  
9                   of gasoline sold or introduced into  
10                  commerce in calendar year 2012.

11               “(3) NON-CONTIGUOUS STATE OPT-IN.—Upon the  
12               petition of a non-contiguous State, the Administrator  
13               may allow the renewable fuel program established by  
14               subtitle A of title XV of the Energy Policy Act of 2005  
15               to apply in such non-contiguous State at the same  
16               time or any time after the Administrator promulgates  
17               regulations under paragraph (2). The Administrator  
18               may promulgate or revise regulations under para-  
19               graph (2), establish applicable percentages under  
20               paragraph (4), provide for the generation of credits  
21               under paragraph (6), and take such other actions as  
22               may be necessary to allow for the application of the  
23               renewable fuels program in a non-contiguous State.

24               “(4) APPLICABLE PERCENTAGES.—

1           “(A) *PROVISION OF ESTIMATE OF VOLUMES*  
2           *OF GASOLINE SALES.*—Not later than October 31  
3           of each of calendar years 2005 through 2011, the  
4           Administrator of the Energy Information Ad-  
5           ministration shall provide to the Administrator  
6           of the Environmental Protection Agency an esti-  
7           mate of the volumes of gasoline that will be sold  
8           or introduced into commerce in the United  
9           States during the following calendar year.

10           “(B) *DETERMINATION OF APPLICABLE PER-*  
11           *CENTAGES.*—

12           “(i) *IN GENERAL.*—Not later than No-  
13           vember 30 of each of the calendar years  
14           2005 through 2011, based on the estimate  
15           provided under subparagraph (A), the Ad-  
16           ministrator shall determine and publish in  
17           the Federal Register, with respect to the fol-  
18           lowing calendar year, the renewable fuel ob-  
19           ligation that ensures that the requirements  
20           of paragraph (2) are met.

21           “(ii) *REQUIRED ELEMENTS.*—The re-  
22           newable fuel obligation determined for a  
23           calendar year under clause (i) shall—

1                   “(I) be applicable to refiners,  
2                   blenders, and importers, as appro-  
3                   priate;

4                   “(II) be expressed in terms of a  
5                   volume percentage of gasoline sold or  
6                   introduced into commerce; and

7                   “(III) subject to subparagraph  
8                   (C)(i), consist of a single applicable  
9                   percentage that applies to all categories  
10                  of persons specified in subclause (I).

11                  “(C) *ADJUSTMENTS*.—In determining the  
12                  applicable percentage for a calendar year, the  
13                  Administrator shall make adjustments—

14                  “(i) to prevent the imposition of redun-  
15                  dant obligations to any person specified in  
16                  subparagraph (B)(ii)(I); and

17                  “(ii) to account for the use of renew-  
18                  able fuel during the previous calendar year  
19                  by small refineries that are exempt under  
20                  paragraph (11).

21                  “(5) *EQUIVALENCY*.—For the purpose of para-  
22                  graph (2), 1 gallon of either cellulosic biomass ethanol  
23                  or waste derived ethanol—

24                  “(A) shall be considered to be the equivalent  
25                  of 1.5 gallon of renewable fuel; or

1           “(B) if the cellulosic biomass ethanol or  
2 waste derived ethanol is derived from agricul-  
3 tural residue or wood residue or is an agricul-  
4 tural byproduct (as that term is used in section  
5 919 of the Energy Policy Act of 2005), shall be  
6 considered to be the equivalent of 2.5 gallons of  
7 renewable fuel.

8           “(6) CREDIT PROGRAM.—

9           “(A) IN GENERAL.—The regulations pro-  
10 mulgated to carry out this subsection shall pro-  
11 vide for the generation of an appropriate  
12 amount of credits by any person that refines,  
13 blends, or imports gasoline that contains a quan-  
14 tity of renewable fuel that is greater than the  
15 quantity required under paragraph (2). Such  
16 regulations shall provide for the generation of an  
17 appropriate amount of credits for biodiesel fuel.  
18 If a small refinery notifies the Administrator  
19 that it waives the exemption provided paragraph  
20 (11), the regulations shall provide for the genera-  
21 tion of credits by the small refinery beginning in  
22 the year following such notification.

23           “(B) USE OF CREDITS.—A person that gen-  
24 erates credits under subparagraph (A) may use  
25 the credits, or transfer all or a portion of the

1       *credits to another person, for the purpose of com-*  
2       *plying with paragraph (2).*

3               “(C) *LIFE OF CREDITS.*—*A credit generated*  
4       *under this paragraph shall be valid to show com-*  
5       *pliance—*

6                       “(i) *in the calendar year in which the*  
7       *credit was generated or the next calendar*  
8       *year; or*

9                       “(ii) *in the calendar year in which the*  
10       *credit was generated or next two consecutive*  
11       *calendar years if the Administrator promul-*  
12       *gates regulations under paragraph (7).*

13               “(D) *INABILITY TO PURCHASE SUFFICIENT*  
14       *CREDITS.*—*The regulations promulgated to carry*  
15       *out this subsection shall include provisions al-*  
16       *lowing any person that is unable to generate or*  
17       *purchase sufficient credits to meet the require-*  
18       *ments under paragraph (2) to carry forward a*  
19       *renewable fuel deficit provided that, in the cal-*  
20       *endar year following the year in which the re-*  
21       *newable fuel deficit is created, such person shall*  
22       *achieve compliance with the renewable fuel re-*  
23       *quirement under paragraph (2), and shall gen-*  
24       *erate or purchase additional renewable fuel cred-*

1            *its to offset the renewable fuel deficit of the pre-*  
2            *vious year.*

3            “(7) *SEASONAL VARIATIONS IN RENEWABLE*  
4            *FUEL USE.—*

5            “(A) *STUDY.—For each of the calendar*  
6            *years 2005 through 2012, the Administrator of*  
7            *the Energy Information Administration shall*  
8            *conduct a study of renewable fuels blending to*  
9            *determine whether there are excessive seasonal*  
10           *variations in the use of renewable fuels.*

11           “(B) *REGULATION OF EXCESSIVE SEASONAL*  
12           *VARIATIONS.—If, for any calendar year, the Ad-*  
13           *ministrator of the Energy Information Adminis-*  
14           *tration, based on the study under subparagraph*  
15           *(A), makes the determinations specified in sub-*  
16           *paragraph (C), the Administrator shall promul-*  
17           *gate regulations to ensure that 35 percent or*  
18           *more of the quantity of renewable fuels necessary*  
19           *to meet the requirement of paragraph (2) is used*  
20           *during each of the periods specified in subpara-*  
21           *graph (D) of each subsequent calendar year.*

22           “(C) *DETERMINATIONS.—The determina-*  
23           *tions referred to in subparagraph (B) are that—*

24           “(i) *less than 35 percent of the quan-*  
25           *tity of renewable fuels necessary to meet the*

1            *requirement of paragraph (2) has been used*  
2            *during one of the periods specified in sub-*  
3            *paragraph (D) of the calendar year;*

4            *“(ii) a pattern of excessive seasonal*  
5            *variation described in clause (i) will con-*  
6            *tinue in subsequent calendar years; and*

7            *“(iii) promulgating regulations or*  
8            *other requirements to impose a 35 percent*  
9            *or more seasonal use of renewable fuels will*  
10           *not prevent or interfere with the attainment*  
11           *of national ambient air quality standards*  
12           *or significantly increase the price of motor*  
13           *fuels to the consumer.*

14           *“(D) PERIODS.—The two periods referred to*  
15           *in this paragraph are—*

16           *“(i) April through September; and*

17           *“(ii) January through March and Oc-*  
18           *tober through December.*

19           *“(E) EXCLUSIONS.—Renewable fuels blend-*  
20           *ed or consumed in 2005 in a State which has re-*  
21           *ceived a waiver under section 209(b) shall not be*  
22           *included in the study in subparagraph (A).*

23           *“(8) WAIVERS.—*

24           *“(A) IN GENERAL.—The Administrator, in*  
25           *consultation with the Secretary of Agriculture*

1       *and the Secretary of Energy, may waive the re-*  
2       *quirement of paragraph (2) in whole or in part*  
3       *on petition by one or more States by reducing*  
4       *the national quantity of renewable fuel required*  
5       *under this subsection—*

6               “(i) based on a determination by the  
7       *Administrator, after public notice and op-*  
8       *portunity for comment, that implementa-*  
9       *tion of the requirement would severely harm*  
10       *the economy or environment of a State, a*  
11       *region, or the United States; or*

12              “(ii) based on a determination by the  
13       *Administrator, after public notice and op-*  
14       *portunity for comment, that there is an in-*  
15       *adequate domestic supply or distribution*  
16       *capacity to meet the requirement.*

17              “(B) *PETITIONS FOR WAIVERS.—The Ad-*  
18       *ministrator, in consultation with the Secretary*  
19       *of Agriculture and the Secretary of Energy, shall*  
20       *approve or disapprove a State petition for a*  
21       *waiver of the requirement of paragraph (2) with-*  
22       *in 90 days after the date on which the petition*  
23       *is received by the Administrator.*

24              “(C) *TERMINATION OF WAIVERS.—A waiver*  
25       *granted under subparagraph (A) shall terminate*



1           *after 1 year, but may be renewed by the Admin-*  
2           *istrator after consultation with the Secretary of*  
3           *Agriculture and the Secretary of Energy.*

4           “(9) *STUDY AND WAIVER FOR INITIAL YEAR OF*  
5           *PROGRAM.—Not later than 180 days after the enact-*  
6           *ment of this subsection, the Secretary of Energy shall*  
7           *complete for the Administrator a study assessing*  
8           *whether the renewable fuels requirement under para-*  
9           *graph (2) will likely result in significant adverse con-*  
10          *sumer impacts in 2005, on a national, regional, or*  
11          *State basis. Such study shall evaluate renewable fuel*  
12          *supplies and prices, blendstock supplies, and supply*  
13          *and distribution system capabilities. Based on such*  
14          *study, the Secretary shall make specific recommenda-*  
15          *tions to the Administrator regarding waiver of the re-*  
16          *quirements of paragraph (2), in whole or in part, to*  
17          *avoid any such adverse impacts. Within 270 days*  
18          *after the enactment of this subsection, the Adminis-*  
19          *trator shall, consistent with the recommendations of*  
20          *the Secretary, waive, in whole or in part, the renew-*  
21          *able fuels requirement under paragraph (2) by reduc-*  
22          *ing the national quantity of renewable fuel required*  
23          *under this subsection in 2005. This paragraph shall*  
24          *not be interpreted as limiting the Administrator’s au-*  
25          *thority to waive the requirements of paragraph (2) in*

1 whole, or in part, under paragraph (8) or paragraph  
2 (10), pertaining to waivers.

3 “(10) ASSESSMENT AND WAIVER.—The Adminis-  
4 trator, in consultation with the Secretary of Energy  
5 and the Secretary of Agriculture, shall evaluate the  
6 requirement of paragraph (2) and determine, prior to  
7 January 1, 2007, and prior to January 1 of any sub-  
8 sequent year in which the applicable volume of renew-  
9 able fuel is increased under paragraph (2)(B), wheth-  
10 er the requirement of paragraph (2), including the  
11 applicable volume of renewable fuel contained in  
12 paragraph (2)(B) should remain in effect, in whole or  
13 in part, during 2007 or any year or years subsequent  
14 to 2007. In evaluating the requirement of paragraph  
15 (2) and in making any determination under this sec-  
16 tion, the Administrator shall consider the best avail-  
17 able information and data collected by accepted meth-  
18 ods or best available means regarding—

19 “(A) the capacity of renewable fuel pro-  
20 ducers to supply an adequate amount of renew-  
21 able fuel at competitive prices to fulfill the re-  
22 quirement of paragraph (2);

23 “(B) the potential of the requirement of  
24 paragraph (2) to significantly raise the price of  
25 gasoline, food (excluding the net price impact on

1        *the requirement in paragraph (2) on commod-*  
2        *ities used in the production of ethanol), or heat-*  
3        *ing oil for consumers in any significant area or*  
4        *region of the country above the price that would*  
5        *otherwise apply to such commodities in the ab-*  
6        *sence of such requirement;*

7                *“(C) the potential of the requirement of*  
8        *paragraph (2) to interfere with the supply of fuel*  
9        *in any significant gasoline market or region of*  
10       *the country, including interference with the effi-*  
11       *cient operation of refiners, blenders, importers,*  
12       *wholesale suppliers, and retail vendors of gaso-*  
13       *line, and other motor fuels; and*

14                *“(D) the potential of the requirement of*  
15       *paragraph (2) to cause or promote exceedances of*  
16       *Federal, State, or local air quality standards.*

17       *If the Administrator determines, by clear and con-*  
18       *vincing information, after public notice and the op-*  
19       *portunity for comment, that the requirement of para-*  
20       *graph (2) would have significant and meaningful ad-*  
21       *verse impact on the supply of fuel and related infra-*  
22       *structure or on the economy, public health, or envi-*  
23       *ronment of any significant area or region of the coun-*  
24       *try, the Administrator may waive, in whole or in*  
25       *part, the requirement of paragraph (2) in any one*

1     *year for which the determination is made for that*  
2     *area or region of the country, except that any such*  
3     *waiver shall not have the effect of reducing the appli-*  
4     *cable volume of renewable fuel specified in paragraph*  
5     *(2)(B) with respect to any year for which the deter-*  
6     *mination is made. In determining economic impact*  
7     *under this paragraph, the Administrator shall not*  
8     *consider the reduced revenues available from the*  
9     *Highway Trust Fund (section 9503 of the Internal*  
10    *Revenue Code of 1986) as a result of the use of eth-*  
11    *anol.*

12           “(11) *SMALL REFINERIES.*—

13               “(A) *IN GENERAL.*—*The requirement of*  
14               *paragraph (2) shall not apply to small refineries*  
15               *until the first calendar year beginning more*  
16               *than 5 years after the first year set forth in the*  
17               *table in paragraph (2)(B)(i). Not later than De-*  
18               *cember 31, 2007, the Secretary of Energy shall*  
19               *complete for the Administrator a study to deter-*  
20               *mine whether the requirement of paragraph (2)*  
21               *would impose a disproportionate economic hard-*  
22               *ship on small refineries. For any small refinery*  
23               *that the Secretary of Energy determines would*  
24               *experience a disproportionate economic hardship,*  
25               *the Administrator shall extend the small refinery*

1       *exemption for such small refinery for no less*  
2       *than two additional years.*

3               “(B) *ECONOMIC HARDSHIP.*—

4                       “(i) *EXTENSION OF EXEMPTION.*—A  
5       *small refinery may at any time petition the*  
6       *Administrator for an extension of the ex-*  
7       *emption from the requirement of paragraph*  
8       *(2) for the reason of disproportionate eco-*  
9       *nom ic hardship. In evaluating a hardship*  
10      *petition, the Administrator, in consultation*  
11      *with the Secretary of Energy, shall consider*  
12      *the findings of the study in addition to*  
13      *other economic factors.*

14                      “(ii) *DEADLINE FOR ACTION ON PETI-*  
15      *TIONS.*—*The Administrator shall act on*  
16      *any petition submitted by a small refinery*  
17      *for a hardship exemption not later than 90*  
18      *days after the receipt of the petition.*

19               “(C) *CREDIT PROGRAM.*—*If a small refin-*  
20      *ery notifies the Administrator that it waives the*  
21      *exemption provided by this Act, the regulations*  
22      *shall provide for the generation of credits by the*  
23      *small refinery beginning in the year following*  
24      *such notification.*

1           “(D) *OPT-IN FOR SMALL REFINERS.*—A  
2           *small refinery shall be subject to the require-*  
3           *ments of this section if it notifies the Adminis-*  
4           *trator that it waives the exemption under sub-*  
5           *paragraph (A).*

6           “(12) *ETHANOL MARKET CONCENTRATION ANAL-*  
7           *YSIS.*—

8           “(A) *ANALYSIS.*—

9           “(i) *IN GENERAL.*—*Not later than 180*  
10           *days after the date of enactment of this sub-*  
11           *section, and annually thereafter, the Federal*  
12           *Trade Commission shall perform a market*  
13           *concentration analysis of the ethanol pro-*  
14           *duction industry using the Herfindahl-*  
15           *Hirschman Index to determine whether*  
16           *there is sufficient competition among indus-*  
17           *try participants to avoid price setting and*  
18           *other anticompetitive behavior.*

19           “(ii) *SCORING.*—*For the purpose of*  
20           *scoring under clause (i) using the*  
21           *Herfindahl-Hirschman Index, all marketing*  
22           *arrangements among industry participants*  
23           *shall be considered.*

24           “(B) *REPORT.*—*Not later than December 1,*  
25           *2005, and annually thereafter, the Federal Trade*

1           *Commission shall submit to Congress and the*  
2           *Administrator a report on the results of the mar-*  
3           *ket concentration analysis performed under sub-*  
4           *paragraph (A)(i).”.*

5           ***(b) PENALTIES AND ENFORCEMENT.—Section 211(d)***  
6           *of the Clean Air Act (42 U.S.C. 7545(d)) is amended as*  
7           *follows:*

8           ***(1) In paragraph (1)—***

9                   ***(A) in the first sentence, by striking “or***  
10                   ***(n)” each place it appears and inserting “(n), or***  
11                   ***(o)”;*** *and*

12                   ***(B) in the second sentence, by striking “or***  
13                   ***(m)” and inserting “(m), or (o)”.***

14           ***(2) In the first sentence of paragraph (2), by***  
15           ***striking “and (n)” each place it appears and insert-***  
16           ***ing “(n), and (o)”.***

17           ***(c) SURVEY OF RENEWABLE FUEL MARKET.—***

18                   ***(1) SURVEY AND REPORT.—Not later than De-***  
19                   ***cember 1, 2006, and annually thereafter, the Admin-***  
20                   ***istrator of the Environmental Protection Agency (in***  
21                   ***consultation with the Secretary of Energy acting***  
22                   ***through the Administrator of the Energy Information***  
23                   ***Administration) shall—***

24                   ***(A) conduct, with respect to each conven-***  
25                   ***tional gasoline use area and each reformulated***

1 gasoline use area in each State, a survey to de-  
2 termine the market shares of—

3 (i) conventional gasoline containing  
4 ethanol;

5 (ii) reformulated gasoline containing  
6 ethanol;

7 (iii) conventional gasoline containing  
8 renewable fuel; and

9 (iv) reformulated gasoline containing  
10 renewable fuel; and

11 (B) submit to Congress, and make publicly  
12 available, a report on the results of the survey  
13 under subparagraph (A).

14 (2) *RECORDKEEPING AND REPORTING REQUIRE-*  
15 *MENTS.*—*The Administrator of the Environmental*  
16 *Protection Agency (hereinafter in this subsection re-*  
17 *ferred to as the “Administrator”) may require any re-*  
18 *finer, blender, or importer to keep such records and*  
19 *make such reports as are necessary to ensure that the*  
20 *survey conducted under paragraph (1) is accurate.*  
21 *The Administrator, to avoid duplicative requirements,*  
22 *shall rely, to the extent practicable, on existing re-*  
23 *porting and recordkeeping requirements and other in-*  
24 *formation available to the Administrator including*



1        *gasoline distribution patterns that include multistate*  
2        *use areas.*

3            (3) *APPLICABLE LAW.*—*Activities carried out*  
4        *under this subsection shall be conducted in a manner*  
5        *designed to protect confidentiality of individual re-*  
6        *sponses.*

7        **SEC. 1502. FUELS SAFE HARBOR.**

8            (a) *IN GENERAL.*—*Notwithstanding any other provi-*  
9        *sion of Federal or State law, no renewable fuel, as defined*  
10       *by section 211(o)(1) of the Clean Air Act, or methyl tertiary*  
11       *butyl ether (hereinafter in this section referred to as*  
12       *“MTBE”), used or intended to be used as a motor vehicle*  
13       *fuel, nor any motor vehicle fuel containing such renewable*  
14       *fuel or MTBE, shall be deemed a defective product by virtue*  
15       *of the fact that it is, or contains, such a renewable fuel or*  
16       *MTBE, if it does not violate a control or prohibition im-*  
17       *posed by the Administrator of the Environmental Protec-*  
18       *tion Agency (hereinafter in this section referred to as the*  
19       *“Administrator”) under section 211 of such Act, and the*  
20       *manufacturer is in compliance with all requests for infor-*  
21       *mation under subsection (b) of such section 211 of such Act.*  
22       *If the safe harbor provided by this section does not apply,*  
23       *the existence of a claim of defective product shall be deter-*  
24       *mined under otherwise applicable law. Nothing in this sub-*  
25       *section shall be construed to affect the liability of any per-*

1 son for environmental remediation costs, drinking water  
2 contamination, negligence for spills or other reasonably  
3 foreseeable events, public or private nuisance, trespass,  
4 breach of warranty, breach of contract, or any other liabil-  
5 ity other than liability based upon a claim of defective  
6 product.

7 (b) *EFFECTIVE DATE.*—This section shall be effective  
8 as of September 5, 2003, and shall apply with respect to  
9 all claims filed on or after that date.

10 **SEC. 1503. FINDINGS AND MTBE TRANSITION ASSISTANCE.**

11 (a) *FINDINGS.*—Congress finds that—

12 (1) since 1979, methyl tertiary butyl ether (here-  
13 inafter in this section referred to as “MTBE”) has  
14 been used nationwide at low levels in gasoline to re-  
15 place lead as an octane booster or anti-knocking  
16 agent;

17 (2) Public Law 101–549 (commonly known as  
18 the “Clean Air Act Amendments of 1990”) (42 U.S.C.  
19 7401 et seq.) established a fuel oxygenate standard  
20 under which reformulated gasoline must contain at  
21 least 2 percent oxygen by weight;

22 (3) at the time of the adoption of the fuel oxygen  
23 standard, Congress was aware that significant use of  
24 MTBE would result from the adoption of that stand-  
25 ard, and that the use of MTBE would likely be im-

1        *portant to the cost-effective implementation of that*  
2        *program;*

3            *(4) Congress was aware that gasoline and its*  
4        *component additives can and do leak from storage*  
5        *tanks;*

6            *(5) the fuel industry responded to the fuel oxy-*  
7        *genate standard established by Public Law 101–549*  
8        *by making substantial investments in—*

9            *(A) MTBE production capacity; and*

10          *(B) systems to deliver MTBE-containing*  
11        *gasoline to the marketplace;*

12          *(6) having previously required oxygenates like*  
13        *MTBE for air quality purposes, Congress has—*

14          *(A) reconsidered the relative value of MTBE*  
15        *in gasoline;*

16          *(B) decided to establish a date certain for*  
17        *action by the Environmental Protection Agency*  
18        *to prohibit the use of MTBE in gasoline; and*

19          *(C) decided to provide for the elimination of*  
20        *the oxygenate requirement for reformulated gaso-*  
21        *line and to provide for a renewable fuels content*  
22        *requirement for motor fuel; and*

23          *(7) it is appropriate for Congress to provide*  
24        *some limited transition assistance—*

1           (A) to merchant producers of MTBE who  
2           produced MTBE in response to a market created  
3           by the oxygenate requirement contained in the  
4           Clean Air Act; and

5           (B) for the purpose of mitigating any fuel  
6           supply problems that may result from the elimi-  
7           nation of the oxygenate requirement for reformu-  
8           lated gasoline and from the decision to establish  
9           a date certain for action by the Environmental  
10          Protection Agency to prohibit the use of MTBE  
11          in gasoline.

12          (b) *PURPOSES.*—The purpose of this section is to pro-  
13          vide assistance to merchant producers of MTBE in making  
14          the transition from producing MTBE to producing other  
15          fuel additives.

16          (c) *MTBE MERCHANT PRODUCER CONVERSION AS-*  
17          *SISTANCE.*—Section 211(c) of the Clean Air Act (42 U.S.C.  
18          7545(c)) is amended by adding at the end the following:

19                 “(5) *MTBE MERCHANT PRODUCER CONVERSION*  
20          *ASSISTANCE.*—

21                 “(A) *IN GENERAL.*—

22                         “(i) *GRANTS.*—The Secretary of En-  
23                         ergy, in consultation with the Adminis-  
24                         trator, may make grants to merchant pro-  
25                         ducers of methyl tertiary butyl ether (here-

1            *inafter in this subsection referred to as*  
2            *‘MTBE’) in the United States to assist the*  
3            *producers in the conversion of eligible pro-*  
4            *duction facilities described in subparagraph*  
5            *(C) to the production of iso-octane, iso-*  
6            *octene, alkylates, or renewable fuels.*

7            *“(ii) DETERMINATION.—The Adminis-*  
8            *trator, in consultation with the Secretary of*  
9            *Energy, may determine that transition as-*  
10           *sistance for the production of iso-octane,*  
11           *iso-octene, alkylates, or renewable fuels is*  
12           *inconsistent with the provisions of subpara-*  
13           *graph (B) and, on that basis, may deny ap-*  
14           *plications for grants authorized by this*  
15           *paragraph.*

16           *“(B) FURTHER GRANTS.—The Secretary of*  
17           *Energy, in consultation with the Administrator,*  
18           *may also further make grants to merchant pro-*  
19           *ducers of MTBE in the United States to assist*  
20           *the producers in the conversion of eligible pro-*  
21           *duction facilities described in subparagraph (C)*  
22           *to the production of such other fuel additives*  
23           *(unless the Administrator determines that such*  
24           *fuel additives may reasonably be anticipated to*

1           *endanger public health or the environment) that,*  
2           *consistent with this subsection—*

3                     *“(i) have been registered and have been*  
4                     *tested or are being tested in accordance with*  
5                     *the requirements of this section; and*

6                     *“(ii) will contribute to replacing gaso-*  
7                     *line volumes lost as a result of amendments*  
8                     *made to subsection (k) of this section by sec-*  
9                     *tion 1504(a) and 1506 of the Energy Policy*  
10                    *Act of 2005.*

11                    *“(C) ELIGIBLE PRODUCTION FACILITIES.—*  
12                    *A production facility shall be eligible to receive*  
13                    *a grant under this paragraph if the production*  
14                    *facility—*

15                             *“(i) is located in the United States;*  
16                             *and*

17                             *“(ii) produced MTBE for consumption*  
18                             *before April 1, 2003 and ceased production*  
19                             *at any time after the date of enactment of*  
20                             *this paragraph.*

21                    *“(D) AUTHORIZATION OF APPROPRIA-*  
22                    *TIONS.—There are authorized to be appropriated*  
23                    *to carry out this paragraph \$250,000,000 for*  
24                    *each of fiscal years 2005 through 2012, to re-*  
25                    *main available until expended.”.*

1 **SEC. 1504. USE OF MTBE.**

2       (a) *IN GENERAL.*—Subject to subsections (e) and (f),  
3 not later than December 31, 2014, the use of methyl tertiary  
4 butyl ether (hereinafter in this section referred to as  
5 “MTBE”) in motor vehicle fuel in any State other than  
6 a State described in subsection (c) is prohibited.

7       (b) *REGULATIONS.*—The Administrator of the Envi-  
8 ronmental Protection Agency (hereafter referred to in this  
9 section as the “Administrator”) shall promulgate regula-  
10 tions to effect the prohibition in subsection (a).

11       (c) *STATES THAT AUTHORIZE USE.*—A State de-  
12 scribed in this subsection is a State in which the Governor  
13 of the State submits a notification to the Administrator au-  
14 thorizing the use of MTBE in motor vehicle fuel sold or  
15 used in the State.

16       (d) *PUBLICATION OF NOTICE.*—The Administrator  
17 shall publish in the Federal Register each notice submitted  
18 by a State under subsection (c).

19       (e) *TRACE QUANTITIES.*—In carrying out subsection  
20 (a), the Administrator may allow trace quantities of  
21 MTBE, not to exceed 0.5 percent by volume, to be present  
22 in motor vehicle fuel in cases that the Administrator deter-  
23 mines to be appropriate.

24       (f) *LIMITATION.*—The Administrator, under authority  
25 of subsection (a), shall not prohibit or control the produc-

1 *tion of MTBE for export from the United States or for any*  
2 *other use other than for use in motor vehicle fuel.*

3 *(g) EFFECT ON STATE LAW.—The amendments made*  
4 *by this title have no effect regarding any available author-*  
5 *ity of States to limit the use of methyl tertiary butyl ether*  
6 *in motor vehicle fuel.*

7 **SEC. 1505. NATIONAL ACADEMY OF SCIENCES REVIEW AND**  
8 **PRESIDENTIAL DETERMINATION.**

9 *(a) NAS REVIEW.—Not later than May 31, 2013, the*  
10 *Secretary shall enter into an arrangement with the Na-*  
11 *tional Academy of Sciences to review the use of methyl ter-*  
12 *tiary butyl ether (hereafter referred to in this section as*  
13 *“MTBE”) in fuel and fuel additives. The review shall only*  
14 *use the best available scientific information and data col-*  
15 *lected by accepted methods or the best available means. The*  
16 *review shall examine the use of MTBE in fuel and fuel ad-*  
17 *ditives, significant beneficial and detrimental effects of this*  
18 *use on environmental quality or public health or welfare*  
19 *including the costs and benefits of such effects, likely effects*  
20 *of controls or prohibitions on MTBE regarding fuel avail-*  
21 *ability and price, and other appropriate and reasonable ac-*  
22 *tions that are available to protect the environment or public*  
23 *health or welfare from any detrimental effects of the use*  
24 *of MTBE in fuel or fuel additives. The review shall be peer-*  
25 *reviewed prior to publication and all supporting data and*



1 *analytical models shall be available to the public. The re-*  
 2 *view shall be completed no later than May 31, 2014.*

3 *(b) PRESIDENTIAL DETERMINATION.—No later than*  
 4 *June 30, 2014, the President may make a determination*  
 5 *that restrictions on the use of MTBE to be implemented*  
 6 *pursuant to section 1504 shall not take place and that the*  
 7 *legal authority contained in section 1504 to prohibit the*  
 8 *use of MTBE in motor vehicle fuel shall become null and*  
 9 *void.*

10 **SEC. 1506. ELIMINATION OF OXYGEN CONTENT REQUIRE-**  
 11 **MENT FOR REFORMULATED GASOLINE.**

12 *(a) ELIMINATION.—*

13 *(1) IN GENERAL.—Section 211(k) of the Clean*  
 14 *Air Act (42 U.S.C. 7545(k)) is amended as follows:*

15 *(A) In paragraph (2)—*

16 *(i) in the second sentence of subpara-*  
 17 *graph (A), by striking “(including the oxy-*  
 18 *gen content requirement contained in sub-*  
 19 *paragraph (B))”;*

20 *(ii) by striking subparagraph (B); and*

21 *(iii) by redesignating subparagraphs*  
 22 *(C) and (D) as subparagraphs (B) and (C),*  
 23 *respectively.*

24 *(B) In paragraph (3)(A), by striking clause*

25 *(v).*

1                   (C) *In paragraph (7)—*

2                   (i) *in subparagraph (A)—*

3                   (I) *by striking clause (i); and*

4                   (II) *by redesignating clauses (ii)*  
5                   *and (iii) as clauses (i) and (ii), respec-*  
6                   *tively; and*

7                   (ii) *in subparagraph (C)—*

8                   (I) *by striking clause (ii).*

9                   (II) *by redesignating clause (iii)*  
10                  *as clause (ii).*

11               (2) *EFFECTIVE DATE.—The amendments made*  
12               *by paragraph (1) take effect 270 days after the date*  
13               *of enactment of this Act, except that such amendments*  
14               *shall take effect upon such date of enactment in any*  
15               *State that has received a waiver under section 209(b)*  
16               *of the Clean Air Act.*

17               (b) *MAINTENANCE OF TOXIC AIR POLLUTANT EMIS-*  
18               *SION REDUCTIONS.—Section 211(k)(1) of the Clean Air Act*  
19               *(42 U.S.C. 7545(k)(1)) is amended as follows:*

20               (1) *By striking “Within 1 year after the enact-*  
21               *ment of the Clean Air Act Amendments of 1990,” and*  
22               *inserting the following:*

23                       “(A) *IN GENERAL.—Not later than Novem-*  
24                       *ber 15, 1991,”.*

25               (2) *By adding at the end the following:*

1           “(B) *MAINTENANCE OF TOXIC AIR POLLUT-*  
2           *ANT EMISSIONS REDUCTIONS FROM REFORMU-*  
3           *LATED GASOLINE.*—

4           “(i) *DEFINITIONS.*—*In this subpara-*  
5           *graph the term ‘PADD’ means a Petroleum*  
6           *Administration for Defense District.*

7           “(ii) *REGULATIONS REGARDING EMIS-*  
8           *SIONS OF TOXIC AIR POLLUTANTS.*—*Not*  
9           *later than 270 days after the date of enact-*  
10          *ment of this subparagraph the Adminis-*  
11          *trator shall establish, for each refinery or*  
12          *importer, standards for toxic air pollutants*  
13          *from use of the reformulated gasoline pro-*  
14          *duced or distributed by the refinery or im-*  
15          *porter that maintain the reduction of the*  
16          *average annual aggregate emissions of toxic*  
17          *air pollutants for reformulated gasoline pro-*  
18          *duced or distributed by the refinery or im-*  
19          *porter during calendar years 1999 and*  
20          *2000, determined on the basis of data col-*  
21          *lected by the Administrator with respect to*  
22          *the refinery or importer.*

23          “(iii) *STANDARDS APPLICABLE TO SPE-*  
24          *CIFIC REFINERIES OR IMPORTERS.*—

1                   “(I) *APPLICABILITY OF STAND-*  
2                   *ARDS.—For any calendar year, the*  
3                   *standards applicable to a refinery or*  
4                   *importer under clause (ii) shall apply*  
5                   *to the quantity of gasoline produced or*  
6                   *distributed by the refinery or importer*  
7                   *in the calendar year only to the extent*  
8                   *that the quantity is less than or equal*  
9                   *to the average annual quantity of re-*  
10                  *formulated gasoline produced or dis-*  
11                  *tributed by the refinery or importer*  
12                  *during calendar years 1999 and 2000.*

13                  “(II) *APPLICABILITY OF OTHER*  
14                  *STANDARDS.—For any calendar year,*  
15                  *the quantity of gasoline produced or*  
16                  *distributed by a refinery or importer*  
17                  *that is in excess of the quantity subject*  
18                  *to subclause (I) shall be subject to*  
19                  *standards for toxic air pollutants pro-*  
20                  *mulgated under subparagraph (A) and*  
21                  *paragraph (3)(B).*

22                  “(iv) *CREDIT PROGRAM.—The Admin-*  
23                  *istrator shall provide for the granting and*  
24                  *use of credits for emissions of toxic air pol-*

1            *lutants in the same manner as provided in*  
2            *paragraph (7).*

3            “(v) *REGIONAL PROTECTION OF TOXICS*  
4            *REDUCTION BASELINES.*—

5            “(I) *IN GENERAL.*—*Not later than*  
6            *60 days after the date of enactment of*  
7            *this subparagraph, and not later than*  
8            *April 1 of each calendar year that be-*  
9            *gins after that date of enactment, the*  
10           *Administrator shall publish in the*  
11           *Federal Register a report that specifies,*  
12           *with respect to the previous calendar*  
13           *year—*

14           “(aa) *the quantity of refor-*  
15           *mulated gasoline produced that is*  
16           *in excess of the average annual*  
17           *quantity of reformulated gasoline*  
18           *produced in 1999 and 2000; and*

19           “(bb) *the reduction of the av-*  
20           *erage annual aggregate emissions*  
21           *of toxic air pollutants in each*  
22           *PADD, based on retail survey*  
23           *data or data from other appro-*  
24           *priate sources.*

1                   “(II) *EFFECT OF FAILURE TO*  
2                   *MAINTAIN AGGREGATE TOXICS REDUC-*  
3                   *TIONS.—If, in any calendar year, the*  
4                   *reduction of the average annual aggre-*  
5                   *gate emissions of toxic air pollutants*  
6                   *in a PADD fails to meet or exceed the*  
7                   *reduction of the average annual aggre-*  
8                   *gate emissions of toxic air pollutants*  
9                   *in the PADD in calendar years 1999*  
10                  *and 2000, the Administrator, not later*  
11                  *than 90 days after the date of publica-*  
12                  *tion of the report for the calendar year*  
13                  *under subclause (I), shall—*

14                   “(aa) *identify, to the max-*  
15                   *imum extent practicable, the rea-*  
16                   *sons for the failure, including the*  
17                   *sources, volumes, and characteris-*  
18                   *tics of reformulated gasoline that*  
19                   *contributed to the failure; and*

20                   “(bb) *promulgate revisions to*  
21                   *the regulations promulgated under*  
22                   *clause (ii), to take effect not ear-*  
23                   *lier than 180 days but not later*  
24                   *than 270 days after the date of*  
25                   *promulgation, to provide that,*

1 *notwithstanding clause (iii)(II),*  
2 *all reformulated gasoline produced*  
3 *or distributed at each refinery or*  
4 *importer shall meet the standards*  
5 *applicable under clause (ii) not*  
6 *later than April 1 of the year fol-*  
7 *lowing the report in subclause (II)*  
8 *and for subsequent years.*

9 “(vi) *REGULATIONS TO CONTROL HAZ-*  
10 *ARDOUS AIR POLLUTANTS FROM MOTOR VE-*  
11 *HICLES AND MOTOR VEHICLE FUELS.—Not*  
12 *later than July 1, 2005, the Administrator*  
13 *shall promulgate final regulations to control*  
14 *hazardous air pollutants from motor vehi-*  
15 *cles and motor vehicle fuels, as provided for*  
16 *in section 80.1045 of title 40, Code of Fed-*  
17 *eral Regulations (as in effect on the date of*  
18 *enactment of this subparagraph).”.*

19 (c) *CONSOLIDATION IN REFORMULATED GASOLINE*  
20 *REGULATIONS.—Not later than 180 days after the date of*  
21 *enactment of this Act, the Administrator of the Environ-*  
22 *mental Protection Agency shall revise the reformulated gas-*  
23 *oline regulations under subpart D of part 80 of title 40,*  
24 *Code of Federal Regulations, to consolidate the regulations*  
25 *applicable to VOC-Control Regions 1 and 2 under section*

1 80.41 of that title by eliminating the less stringent require-  
2 ments applicable to gasoline designated for VOC-Control  
3 Region 2 and instead applying the more stringent require-  
4 ments applicable to gasoline designated for VOC-Control  
5 Region 1.

6 (d) SAVINGS CLAUSE.—Nothing in this section is in-  
7 tended to affect or prejudice either any legal claims or ac-  
8 tions with respect to regulations promulgated by the Ad-  
9 ministrator of the Environmental Protection Agency (here-  
10 inafter in this subsection referred to as the “Adminis-  
11 trator”) prior to the date of enactment of this Act regarding  
12 emissions of toxic air pollutants from motor vehicles or the  
13 adjustment of standards applicable to a specific refinery or  
14 importer made under such prior regulations and the Ad-  
15 ministrator may apply such adjustments to the standards  
16 applicable to such refinery or importer under clause (iii)(I)  
17 of section 211(k)(1)(B) of the Clean Air Act, except that—

18 (1) the Administrator shall revise such adjust-  
19 ments to be based only on calendar years 1999–2000;  
20 and

21 (2) for adjustments based on toxic air pollutant  
22 emissions from reformulated gasoline significantly  
23 below the national annual average emissions of toxic  
24 air pollutants from all reformulated gasoline, the Ad-  
25 ministrator may revise such adjustments to take ac-



1        *count of the scope of Federal or State prohibitions on*  
 2        *the use of methyl tertiary butyl ether imposed after*  
 3        *the date of the enactment of this paragraph, except*  
 4        *that any such adjustment shall require such refiner or*  
 5        *importer, to the greatest extent practicable, to main-*  
 6        *tain the reduction achieved during calendar years*  
 7        *1999–2000 in the average annual aggregate emissions*  
 8        *of toxic air pollutants from reformulated gasoline pro-*  
 9        *duced or distributed by the refinery or importer; Pro-*  
 10       *vided, that any such adjustment shall not be made at*  
 11       *a level below the average percentage of reductions of*  
 12       *emissions of toxic air pollutants for reformulated gas-*  
 13       *oline supplied to PADD I during calendar years*  
 14       *1999–2000.*

15    **SEC. 1507. ANALYSES OF MOTOR VEHICLE FUEL CHANGES.**

16        *Section 211 of the Clean Air Act (42 U.S.C. 7545) is*  
 17       *amended by inserting after subsection (o) the following:*

18        “(p) *ANALYSES OF MOTOR VEHICLE FUEL CHANGES*  
 19       *AND EMISSIONS MODEL.—*

20                “(1) *ANTI-BACKSLIDING ANALYSIS.—*

21                        “(A) *DRAFT ANALYSIS.—Not later than 4*  
 22                        *years after the date of enactment of this sub-*  
 23                        *section, the Administrator shall publish for pub-*  
 24                        *lic comment a draft analysis of the changes in*  
 25                        *emissions of air pollutants and air quality due*

1        *to the use of motor vehicle fuel and fuel additives*  
2        *resulting from implementation of the amend-*  
3        *ments made by subtitle A of title XV of the En-*  
4        *ergy Policy Act of 2005.*

5                *“(B) FINAL ANALYSIS.—After providing a*  
6        *reasonable opportunity for comment but not*  
7        *later than 5 years after the date of enactment of*  
8        *this paragraph, the Administrator shall publish*  
9        *the analysis in final form.*

10              *“(2) EMISSIONS MODEL.—For the purposes of*  
11        *this subsection, as soon as the necessary data are*  
12        *available, the Administrator shall develop and final-*  
13        *ize an emissions model that reasonably reflects the ef-*  
14        *fects of gasoline characteristics or components on*  
15        *emissions from vehicles in the motor vehicle fleet dur-*  
16        *ing calendar year 2005.”.*

17    **SEC. 1508. DATA COLLECTION.**

18        *Section 205 of the Department of Energy Organization*  
19        *Act (42 U.S.C. 7135) is amended by adding at the end the*  
20        *following:*

21              *“(m) RENEWABLE FUELS SURVEY.—(1) In order to*  
22        *improve the ability to evaluate the effectiveness of the Na-*  
23        *tion’s renewable fuels mandate, the Administrator shall con-*  
24        *duct and publish the results of a survey of renewable fuels*  
25        *demand in the motor vehicle fuels market in the United*

1 *States monthly, and in a manner designed to protect the*  
 2 *confidentiality of individual responses. In conducting the*  
 3 *survey, the Administrator shall collect information both on*  
 4 *a national and regional basis, including each of the fol-*  
 5 *lowing:*

6           “(A) *The quantity of renewable fuels produced.*

7           “(B) *The quantity of renewable fuels blended.*

8           “(C) *The quantity of renewable fuels imported.*

9           “(D) *The quantity of renewable fuels demanded.*

10          “(E) *Market price data.*

11          “(F) *Such other analyses or evaluations as the*  
 12 *Administrator finds is necessary to achieve the pur-*  
 13 *poses of this section.*

14          “(2) *The Administrator shall also collect or estimate*  
 15 *information both on a national and regional basis, pursu-*  
 16 *ant to subparagraphs (A) through (F) of paragraph (1),*  
 17 *for the 5 years prior to implementation of this subsection.*

18          “(3) *This subsection does not affect the authority of*  
 19 *the Administrator to collect data under section 52 of the*  
 20 *Federal Energy Administration Act of 1974 (15 U.S.C.*  
 21 *790a).’’.*

22 **SEC. 1509. REDUCING THE PROLIFERATION OF STATE FUEL**  
 23 **CONTROLS.**

24          (a) *EPA APPROVAL OF STATE PLANS WITH FUEL*  
 25 *CONTROLS.—Section 211(c)(4)(C) of the Clean Air Act (42*

1 U.S.C. 7545(c)(4)(C)) is amended by adding at the end the  
2 following: “The Administrator shall not approve a control  
3 or prohibition respecting the use of a fuel or fuel additive  
4 under this subparagraph unless the Administrator, after  
5 consultation with the Secretary of Energy, publishes in the  
6 Federal Register a finding that, in the Administrator’s  
7 judgment, such control or prohibition will not cause fuel  
8 supply or distribution interruptions or have a significant  
9 adverse impact on fuel producibility in the affected area  
10 or contiguous areas.”.

11 (b) STUDY.—The Administrator of the Environmental  
12 Protection Agency (hereinafter in this subsection referred  
13 to as the “Administrator”), in cooperation with the Sec-  
14 retary of Energy, shall undertake a study of the projected  
15 effects on air quality, the proliferation of fuel blends, fuel  
16 availability, and fuel costs of providing a preference for  
17 each of the following:

18 (A) Reformulated gasoline referred to in sub-  
19 section (k) of section 211 of the Clean Air Act.

20 (B) A low RVP gasoline blend that has been cer-  
21 tified by the Administrator as having a Reid Vapor  
22 Pressure of 7.0 pounds per square inch (psi).

23 (C) A low RVP gasoline blend that has been cer-  
24 tified by the Administrator as having a Reid Vapor  
25 Pressure of 7.8 pounds per square inch (psi).

1 *In carrying out such study, the Administrator shall obtain*  
2 *comments from affected parties. The Administrator shall*  
3 *submit the results of such study to the Congress not later*  
4 *than 18 months after the date of enactment of this Act, to-*  
5 *gether with any recommended legislative changes.*

6 **SEC. 1510. FUEL SYSTEM REQUIREMENTS HARMONIZATION**  
7 **STUDY.**

8 *(a) STUDY.—*

9 *(1) IN GENERAL.—The Administrator of the En-*  
10 *vironmental Protection Agency (hereinafter in this*  
11 *section referred to as the “Administrator”) and the*  
12 *Secretary of Energy shall jointly conduct a study of*  
13 *Federal, State, and local requirements concerning*  
14 *motor vehicle fuels, including—*

15 *(A) requirements relating to reformulated*  
16 *gasoline, volatility (measured in Reid vapor*  
17 *pressure), oxygenated fuel, and diesel fuel; and*

18 *(B) other requirements that vary from State*  
19 *to State, region to region, or locality to locality.*

20 *(2) REQUIRED ELEMENTS.—The study shall as-*  
21 *sess—*

22 *(A) the effect of the variety of requirements*  
23 *described in paragraph (1) on the supply, qual-*  
24 *ity, and price of motor vehicle fuels available to*  
25 *consumers in various States and localities;*

1           (B) the effect of the requirements described  
2           in paragraph (1) on achievement of—

3                 (i) national, regional, and local air  
4                 quality standards and goals; and

5                 (ii) related environmental and public  
6                 health protection standards and goals;

7           (C) the effect of Federal, State, and local  
8           motor vehicle fuel regulations, including multiple  
9           motor vehicle fuel requirements, on—

10                 (i) domestic refineries;

11                 (ii) the fuel distribution system; and

12                 (iii) industry investment in new ca-  
13                 pacity;

14           (D) the effect of the requirements described  
15           in paragraph (1) on emissions from vehicles, re-  
16           fineries, and fuel handling facilities;

17           (E) the feasibility of developing national or  
18           regional motor vehicle fuel states for the 48 con-  
19           tiguous States that, while improving air quality  
20           at the national, regional and local levels con-  
21           sistent with the attainment of national ambient  
22           air quality standards, could—

23                 (i) enhance flexibility in the fuel dis-  
24                 tribution infrastructure and improve fuel  
25                 fungibility;

1                   (ii) reduce price volatility and costs to  
2                   consumers and producers;

3                   (iii) provide increased liquidity to the  
4                   gasoline market; and

5                   (iv) enhance fuel quality, consistency,  
6                   and supply;

7                   (F) the feasibility of providing incentives to  
8                   promote cleaner burning motor vehicle fuel; and

9                   (G) the extent to which improvements in air  
10                  quality and any increases or decreases in the  
11                  price of motor fuel can be projected to result  
12                  from the Environmental Protection Agency's  
13                  Tier II requirements for conventional gasoline  
14                  and vehicle emission systems, the reformulated  
15                  gasoline program, the renewable content require-  
16                  ments established by this subtitle, State pro-  
17                  grams regarding gasoline volatility, and any  
18                  other requirements imposed by States or local-  
19                  ities affecting the composition of motor fuel.

20               (b) *REPORT.*—

21                   (1) *IN GENERAL.*—Not later than December 31,  
22                   2007, the Administrator and the Secretary of Energy  
23                   shall submit to Congress a report on the results of the  
24                   study conducted under subsection (a).

25                   (2) *RECOMMENDATIONS.*—

1           (A) *IN GENERAL.*—*The report under this*  
2           *subsection shall contain recommendations for leg-*  
3           *islative and administrative actions that may be*  
4           *taken—*

5                     *(i) to improve air quality;*

6                     *(ii) to reduce costs to consumers and*  
7                     *producers; and*

8                     *(iii) to increase supply liquidity.*

9           (B) *REQUIRED CONSIDERATIONS.*—*The rec-*  
10           *ommendations under subparagraph (A) shall*  
11           *take into account the need to provide advance*  
12           *notice of required modifications to refinery and*  
13           *fuel distribution systems in order to ensure an*  
14           *adequate supply of motor vehicle fuel in all*  
15           *States.*

16           (3) *CONSULTATION.*—*In developing the report*  
17           *under this subsection, the Administrator and the Sec-*  
18           *retary of Energy shall consult with—*

19                     *(A) the Governors of the States;*

20                     *(B) automobile manufacturers;*

21                     *(C) motor vehicle fuel producers and dis-*  
22                     *tributors; and*

23                     *(D) the public.*



1 **SEC. 1511. COMMERCIAL BYPRODUCTS FROM MUNICIPAL**  
2 **SOLID WASTE AND CELLULOSIC BIOMASS**  
3 **LOAN GUARANTEE PROGRAM.**

4 (a) *DEFINITION OF MUNICIPAL SOLID WASTE.*—In  
5 this section, the term “municipal solid waste” has the  
6 meaning given the term “solid waste” in section 1004 of  
7 the Solid Waste Disposal Act (42 U.S.C. 6903).

8 (b) *ESTABLISHMENT OF PROGRAM.*—The Secretary of  
9 Energy (hereinafter in this section referred to as the “Sec-  
10 retary”) shall establish a program to provide guarantees of  
11 loans by private institutions for the construction of facili-  
12 ties for the processing and conversion of municipal solid  
13 waste and cellulosic biomass into fuel ethanol and other  
14 commercial byproducts.

15 (c) *REQUIREMENTS.*—The Secretary may provide a  
16 loan guarantee under subsection (b) to an applicant if—

17 (1) without a loan guarantee, credit is not avail-  
18 able to the applicant under reasonable terms or condi-  
19 tions sufficient to finance the construction of a facil-  
20 ity described in subsection (b);

21 (2) the prospective earning power of the appli-  
22 cant and the character and value of the security  
23 pledged provide a reasonable assurance of repayment  
24 of the loan to be guaranteed in accordance with the  
25 terms of the loan; and

1           (3) the loan bears interest at a rate determined  
2       by the Secretary to be reasonable, taking into account  
3       the current average yield on outstanding obligations  
4       of the United States with remaining periods of matu-  
5       rity comparable to the maturity of the loan.

6       (d) *CRITERIA.*—In selecting recipients of loan guaran-  
7       tees from among applicants, the Secretary shall give pref-  
8       erence to proposals that—

9           (1) meet all applicable Federal and State per-  
10       mitting requirements;

11           (2) are most likely to be successful; and

12           (3) are located in local markets that have the  
13       greatest need for the facility because of—

14           (A) the limited availability of land for  
15       waste disposal;

16           (B) the availability of sufficient quantities  
17       of cellulosic biomass; or

18           (C) a high level of demand for fuel ethanol  
19       or other commercial byproducts of the facility.

20       (e) *MATURITY.*—A loan guaranteed under subsection  
21       (b) shall have a maturity of not more than 20 years.

22       (f) *TERMS AND CONDITIONS.*—The loan agreement for  
23       a loan guaranteed under subsection (b) shall provide that  
24       no provision of the loan agreement may be amended or  
25       waived without the consent of the Secretary.

1       (g) *ASSURANCE OF REPAYMENT.*—*The Secretary shall*  
2 *require that an applicant for a loan guarantee under sub-*  
3 *section (b) provide an assurance of repayment in the form*  
4 *of a performance bond, insurance, collateral, or other means*  
5 *acceptable to the Secretary in an amount equal to not less*  
6 *than 20 percent of the amount of the loan.*

7       (h) *GUARANTEE FEE.*—*The recipient of a loan guar-*  
8 *antee under subsection (b) shall pay the Secretary an*  
9 *amount determined by the Secretary to be sufficient to cover*  
10 *the administrative costs of the Secretary relating to the loan*  
11 *guarantee.*

12       (i) *FULL FAITH AND CREDIT.*—*The full faith and*  
13 *credit of the United States is pledged to the payment of*  
14 *all guarantees made under this section. Any such guarantee*  
15 *made by the Secretary shall be conclusive evidence of the*  
16 *eligibility of the loan for the guarantee with respect to prin-*  
17 *cipal and interest. The validity of the guarantee shall be*  
18 *incontestable in the hands of a holder of the guaranteed*  
19 *loan.*

20       (j) *REPORTS.*—*Until each guaranteed loan under this*  
21 *section has been repaid in full, the Secretary shall annually*  
22 *submit to Congress a report on the activities of the Sec-*  
23 *retary under this section.*

1       (k) *AUTHORIZATION OF APPROPRIATIONS.*—*There are*  
 2 *authorized to be appropriated such sums as are necessary*  
 3 *to carry out this section.*

4       (l) *TERMINATION OF AUTHORITY.*—*The authority of*  
 5 *the Secretary to issue a loan guarantee under subsection*  
 6 *(b) terminates on the date that is 10 years after the date*  
 7 *of enactment of this Act.*

8       **SEC. 1512. CELLULOSIC BIOMASS AND WASTE-DERIVED**  
 9                               **ETHANOL CONVERSION ASSISTANCE.**

10       *Section 211 of the Clean Air Act (42 U.S.C. 7545) is*  
 11 *amended by adding at the end the following:*

12       “(r) *CELLULOSIC BIOMASS AND WASTE-DERIVED*  
 13 *ETHANOL CONVERSION ASSISTANCE.*—

14               “(1) *IN GENERAL.*—*The Secretary of Energy*  
 15 *may provide grants to merchant producers of cel-*  
 16 *lulosic biomass ethanol and waste-derived ethanol in*  
 17 *the United States to assist the producers in building*  
 18 *eligible production facilities described in paragraph*  
 19 *(2) for the production of ethanol.*

20               “(2) *ELIGIBLE PRODUCTION FACILITIES.*—*A pro-*  
 21 *duction facility shall be eligible to receive a grant*  
 22 *under this subsection if the production facility—*

23                       “(A) *is located in the United States; and*

24                       “(B) *uses cellulosic biomass or waste-de-*  
 25 *rived feedstocks derived from agricultural resi-*

1            *dues, wood residues, municipal solid waste, or*  
 2            *agricultural byproducts as that term is used in*  
 3            *section 919 of the Energy Policy Act of 2005.*

4            “(3) *AUTHORIZATION OF APPROPRIATIONS.—*  
 5            *There are authorized to be appropriated the following*  
 6            *amounts to carry out this subsection:*

7                    “(A) \$100,000,000 for fiscal year 2005.

8                    “(B) \$250,000,000 for fiscal year 2006.

9                    “(C) \$400,000,000 for fiscal year 2007.”.

10    ***SEC. 1513. BLENDING OF COMPLIANT REFORMULATED GAS-***  
 11                    ***OLINES.***

12            *Section 211 of the Clean Air Act (42 U.S.C. 7545) is*  
 13            *amended by adding at the end the following:*

14            “(s) *BLENDING OF COMPLIANT REFORMULATED GASO-*  
 15            *LINES.—*

16                    “(1) *IN GENERAL.—*Notwithstanding subsections  
 17                    *(h) and (k) and subject to the limitations in para-*  
 18                    *graph (2) of this subsection, it shall not be a violation*  
 19                    *of this subtitle for a gasoline retailer, during any*  
 20                    *month of the year, to blend at a retail location*  
 21                    *batches of ethanol-blended and non-ethanol-blended re-*  
 22                    *formulated gasoline, provided that—*

23                    “(A) *each batch of gasoline to be blended*  
 24                    *has been individually certified as in compliance*

1           *with subsections (h) and (k) prior to being blend-*  
 2           *ed;*

3           *“(B) the retailer notifies the Administrator*  
 4           *prior to such blending, and identifies the exact*  
 5           *location of the retail station and the specific*  
 6           *tank in which such blending will take place;*

7           *“(C) the retailer retains and, as requested*  
 8           *by the Administrator or the Administrator’s des-*  
 9           *ignee, makes available for inspection such certifi-*  
 10           *cations accounting for all gasoline at the retail*  
 11           *outlet; and*

12           *“(D) the retailer does not, between June 1*  
 13           *and September 15 of each year, blend a batch of*  
 14           *VOC-controlled, or ‘summer’, gasoline with a*  
 15           *batch of non-VOC-controlled, or ‘winter’, gasoline*  
 16           *(as these terms are defined under subsections (h)*  
 17           *and (k)).*

18           *“(2) LIMITATIONS.—*

19           *“(A) FREQUENCY LIMITATION.—A retailer shall*  
 20           *only be permitted to blend batches of compliant refor-*  
 21           *mulated gasoline under this subsection a maximum of*  
 22           *two blending periods between May 1 and September*  
 23           *15 of each calendar year.*

24           *“(B) DURATION OF BLENDING PERIOD.—Each*  
 25           *blending period authorized under subparagraph (A)*

1       *shall extend for a period of no more than 10 consec-*  
2       *utive calendar days.*

3               “(3) *SURVEYS.*—*A sample of gasoline taken from*  
4       *a retail location that has blended gasoline within the*  
5       *past 30 days and is in compliance with subpara-*  
6       *graphs (A), (B), (C), and (D) of paragraph (1) shall*  
7       *not be used in a VOC survey mandated by 40 C.F.R.*  
8       *Part 80.*

9               “(4) *STATE IMPLEMENTATION PLANS.*—*A State*  
10       *shall be held harmless and shall not be required to re-*  
11       *vis its State implementation plan under section 110*  
12       *to account for the emissions from blended gasoline au-*  
13       *thorized under paragraph (1).*

14               “(5) *PRESERVATION OF STATE LAW.*—*Nothing in*  
15       *this subsection shall—*

16                       “(A) *preempt existing State laws or regula-*  
17                       *tions regulating the blending of compliant gaso-*  
18                       *lines; or*

19                       “(B) *prohibit a State from adopting such*  
20                       *restrictions in the future.*

21               “(6) *REGULATIONS.*—*The Administrator shall*  
22       *promulgate, after notice and comment, regulations*  
23       *implementing this subsection within one year after*  
24       *the date of enactment of this subsection.*

1           “(7) *EFFECTIVE DATE.*—*This subsection shall be-*  
 2           *come effective 15 months after the date of its enact-*  
 3           *ment and shall apply to blended batches of reformu-*  
 4           *lated gasoline on or after that date, regardless of*  
 5           *whether the implementing regulations required by*  
 6           *paragraph (6) have been promulgated by the Admin-*  
 7           *istrator by that date.*

8           “(8) *LIABILITY.*—*No person other than the per-*  
 9           *son responsible for blending under this subsection*  
 10          *shall be subject to an enforcement action or penalties*  
 11          *under subsection (d) solely arising from the blending*  
 12          *of compliant reformulated gasolines by the retailers.*

13          “(9) *FORMULATION OF GASOLINE.*—*This sub-*  
 14          *section does not grant authority to the Administrator*  
 15          *or any State (or any subdivision thereof) to require*  
 16          *reformulation of gasoline at the refinery to adjust for*  
 17          *potential or actual emissions increases due to the*  
 18          *blending authorized by this subsection.”.*

19       ***Subtitle B—Underground Storage***  
 20               ***Tank Compliance***

21       ***SEC. 1521. SHORT TITLE.***

22           *This subtitle may be cited as the “Underground Stor-*  
 23       *age Tank Compliance Act of 2005”.*



1 **SEC. 1522. LEAKING UNDERGROUND STORAGE TANKS.**

2       (a) *IN GENERAL.*—Section 9004 of the Solid Waste  
3 *Disposal Act* (42 U.S.C. 6991c) is amended by adding at  
4 *the end the following:*

5       “(f) *TRUST FUND DISTRIBUTION.*—

6               “(1) *IN GENERAL.*—

7                       “(A) *AMOUNT AND PERMITTED USES OF*  
8 *DISTRIBUTION.*—*The Administrator shall dis-*  
9 *tribute to States not less than 80 percent of the*  
10 *funds from the Trust Fund that are made avail-*  
11 *able to the Administrator under section*  
12 *9014(2)(A) for each fiscal year for use in paying*  
13 *the reasonable costs, incurred under a coopera-*  
14 *tive agreement with any State for—*

15                       “(i) *corrective actions taken by the*  
16 *State under section 9003(h)(7)(A);*

17                       “(ii) *necessary administrative ex-*  
18 *penses, as determined by the Administrator,*  
19 *that are directly related to State fund or*  
20 *State assurance programs under subsection*  
21 *(c)(1); or*

22                       “(iii) *enforcement, by a State or a*  
23 *local government, of State or local regula-*  
24 *tions pertaining to underground storage*  
25 *tanks regulated under this subtitle.*

1           “(B) *USE OF FUNDS FOR ENFORCEMENT.*—

2           *In addition to the uses of funds authorized under*  
3           *subparagraph (A), the Administrator may use*  
4           *funds from the Trust Fund that are not distrib-*  
5           *uted to States under subparagraph (A) for en-*  
6           *forcement of any regulation promulgated by the*  
7           *Administrator under this subtitle.*

8           “(C) *PROHIBITED USES.*—*Funds provided*

9           *to a State by the Administrator under subpara-*  
10          *graph (A) shall not be used by the State to pro-*  
11          *vide financial assistance to an owner or operator*  
12          *to meet any requirement relating to underground*  
13          *storage tanks under subparts B, C, D, H, and G*  
14          *of part 280 of title 40, Code of Federal Regula-*  
15          *tions (as in effect on the date of enactment of*  
16          *this subsection).*

17          “(2) *ALLOCATION.*—

18               “(A) *PROCESS.*—*Subject to subparagraphs*

19               *(B) and (C), in the case of a State with which*  
20               *the Administrator has entered into a cooperative*  
21               *agreement under section 9003(h)(7)(A), the Ad-*  
22               *ministrator shall distribute funds from the Trust*  
23               *Fund to the State using an allocation process de-*  
24               *veloped by the Administrator.*

1           “(B) *DIVERSION OF STATE FUNDS.*—*The*  
2           *Administrator shall not distribute funds under*  
3           *subparagraph (A)(iii) of subsection (f)(1) to any*  
4           *State that has diverted funds from a State fund*  
5           *or State assurance program for purposes other*  
6           *than those related to the regulation of under-*  
7           *ground storage tanks covered by this subtitle,*  
8           *with the exception of those transfers that had*  
9           *been completed earlier than the date of enact-*  
10          *ment of this subsection.*

11          “(C) *REVISIONS TO PROCESS.*—*The Admin-*  
12          *istrator may revise the allocation process referred*  
13          *to in subparagraph (A) after—*

14               “(i) *consulting with State agencies re-*  
15               *sponsible for overseeing corrective action for*  
16               *releases from underground storage tanks;*  
17               *and*

18               “(ii) *taking into consideration, at a*  
19               *minimum, each of the following:*

20                       “(I) *The number of confirmed re-*  
21                       *leases from federally regulated leaking*  
22                       *underground storage tanks in the*  
23                       *States.*

1                   “(II) *The number of federally reg-*  
 2                   *ulated underground storage tanks in*  
 3                   *the States.*

4                   “(III) *The performance of the*  
 5                   *States in implementing and enforcing*  
 6                   *the program.*

7                   “(IV) *The financial needs of the*  
 8                   *States.*

9                   “(V) *The ability of the States to*  
 10                  *use the funds referred to in subpara-*  
 11                  *graph (A) in any year.*

12                  “(3) *DISTRIBUTIONS TO STATE AGENCIES.—Dis-*  
 13                  *tributions from the Trust Fund under this subsection*  
 14                  *shall be made directly to a State agency that—*

15                         “(A) *enters into a cooperative agreement re-*  
 16                         *ferred to in paragraph (2)(A); or*

17                         “(B) *is enforcing a State program approved*  
 18                         *under this section.”.*

19                  “(b) *WITHDRAWAL OF APPROVAL OF STATE FUNDS.—*  
 20                  *Section 9004(c) of the Solid Waste Disposal Act (42 U.S.C.*  
 21                  *6991c(c)) is amended by inserting the following new para-*  
 22                  *graph at the end thereof:*

23                         “(6) *WITHDRAWAL OF APPROVAL.—After an op-*  
 24                         *portunity for good faith, collaborative efforts to cor-*  
 25                         *rect financial deficiencies with a State fund, the Ad-*

1        *ministrator may withdraw approval of any State*  
 2        *fund or State assurance program to be used as a fi-*  
 3        *nancial responsibility mechanism without with-*  
 4        *drawing approval of a State underground storage*  
 5        *tank program under section 9004(a).”.*

6        *(c) ABILITY TO PAY.—Section 9003(h)(6) of the Solid*  
 7        *Waste Disposal Act (42 U.S.C. 6591a(h)(6)) is amended by*  
 8        *adding the following new subparagraph at the end thereof:*

9                *“(E) INABILITY OR LIMITED ABILITY TO*  
 10              *PAY.—*

11                    *“(i) IN GENERAL.—In determining the*  
 12                    *level of recovery effort, or amount that*  
 13                    *should be recovered, the Administrator (or*  
 14                    *the State pursuant to paragraph (7)) shall*  
 15                    *consider the owner or operator’s ability to*  
 16                    *pay. An inability or limited ability to pay*  
 17                    *corrective action costs must be demonstrated*  
 18                    *to the Administrator (or the State pursuant*  
 19                    *to paragraph (7)) by the owner or operator.*

20                    *“(ii) CONSIDERATIONS.—In deter-*  
 21                    *mining whether or not a demonstration is*  
 22                    *made under clause (i), the Administrator*  
 23                    *(or the State pursuant to paragraph (7))*  
 24                    *shall take into consideration the ability of*  
 25                    *the owner or operator to pay corrective ac-*

1            *tion costs and still maintain its basic busi-*  
2            *ness operations, including consideration of*  
3            *the overall financial condition of the owner*  
4            *or operator and demonstrable constraints on*  
5            *the ability of the owner or operator to raise*  
6            *revenues.*

7            “(iii) *INFORMATION.*—*An owner or op-*  
8            *erator requesting consideration under this*  
9            *subparagraph shall promptly provide the*  
10           *Administrator (or the State pursuant to*  
11           *paragraph (7)) with all relevant informa-*  
12           *tion needed to determine the ability of the*  
13           *owner or operator to pay corrective action*  
14           *costs.*

15           “(iv) *ALTERNATIVE PAYMENT METH-*  
16           *ODS.*—*The Administrator (or the State pur-*  
17           *suant to paragraph (7)) shall consider al-*  
18           *ternative payment methods as may be nec-*  
19           *essary or appropriate if the Administrator*  
20           *(or the State pursuant to paragraph (7))*  
21           *determines that an owner or operator can-*  
22           *not pay all or a portion of the costs in a*  
23           *lump sum payment.*

24           “(v) *MISREPRESENTATION.*—*If an*  
25           *owner or operator provides false informa-*

tion or otherwise misrepresents their financial situation under clause (ii), the Administrator (or the State pursuant to paragraph (7)) shall seek full recovery of the costs of all such actions pursuant to the provisions of subparagraph (A) without consideration of the factors in subparagraph (B).”.

**SEC. 1523. INSPECTION OF UNDERGROUND STORAGE TANKS.**

(a) *INSPECTION REQUIREMENTS.*—Section 9005 of the Solid Waste Disposal Act (42 U.S.C. 6991d) is amended by inserting the following new subsection at the end thereof:

“(c) *INSPECTION REQUIREMENTS.*—

“(1) *UNINSPECTED TANKS.*—In the case of underground storage tanks regulated under this subtitle that have not undergone an inspection since December 22, 1998, not later than 2 years after the date of enactment of this subsection, the Administrator or a State that receives funding under this subtitle, as appropriate, shall conduct on-site inspections of all such tanks to determine compliance with this subtitle and the regulations under this subtitle (40 C.F.R. 280) or a requirement or standard of a State program developed under section 9004.

1           “(2) *PERIODIC INSPECTIONS.*—After completion  
2       of all inspections required under paragraph (1), the  
3       Administrator or a State that receives funding under  
4       this subtitle, as appropriate, shall conduct on-site in-  
5       spections of each underground storage tank regulated  
6       under this subtitle at least once every 3 years to de-  
7       termine compliance with this subtitle and the regula-  
8       tions under this subtitle (40 C.F.R. 280) or a require-  
9       ment or standard of a State program developed under  
10      section 9004. The Administrator may extend for up  
11      to one additional year the first 3-year inspection in-  
12      terval under this paragraph if the State demonstrates  
13      that it has insufficient resources to complete all such  
14      inspections within the first 3-year period.

15           “(3) *INSPECTION AUTHORITY.*—Nothing in this  
16      section shall be construed to diminish the Administra-  
17      tor’s or a State’s authorities under section 9005(a).”.

18      (b) *STUDY OF ALTERNATIVE INSPECTION PRO-*  
19 *GRAMS.*—The Administrator of the Environmental Protec-  
20 *tion Agency, in coordination with a State, shall gather in-*  
21 *formation on compliance assurance programs that could*  
22 *serve as an alternative to the inspection programs under*  
23 *section 9005(c) of the Solid Waste Disposal Act (42 U.S.C.*  
24 *6991d(c)) and shall, within 4 years after the date of enact-*



1 *ment of this Act, submit a report to the Congress containing*  
2 *the results of such study.*

3 **SEC. 1524. OPERATOR TRAINING.**

4 *(a) IN GENERAL.—Section 9010 of the Solid Waste*  
5 *Disposal Act (42 U.S.C. 6991i) is amended to read as fol-*  
6 *lows:*

7 **“SEC. 9010. OPERATOR TRAINING.**

8 **“(a) GUIDELINES.—**

9 *“(1) IN GENERAL.—Not later than 2 years after*  
10 *the date of enactment of the Underground Storage*  
11 *Tank Compliance Act of 2005, in consultation and*  
12 *cooperation with States and after public notice and*  
13 *opportunity for comment, the Administrator shall*  
14 *publish guidelines that specify training requirements*  
15 *for—*

16 *“(A) persons having primary responsibility*  
17 *for on-site operation and maintenance of under-*  
18 *ground storage tank systems;*

19 *“(B) persons having daily on-site responsi-*  
20 *bility for the operation and maintenance of un-*  
21 *derground storage tanks systems; and*

22 *“(C) daily, on-site employees having pri-*  
23 *mary responsibility for addressing emergencies*  
24 *presented by a spill or release from an under-*  
25 *ground storage tank system.*

1           “(2) *CONSIDERATIONS.*—*The guidelines described*  
2           *in paragraph (1) shall take into account—*

3                   “(A) *State training programs in existence*  
4                   *as of the date of publication of the guidelines;*

5                   “(B) *training programs that are being em-*  
6                   *ployed by tank owners and tank operators as of*  
7                   *the date of enactment of the Underground Stor-*  
8                   *age Tank Compliance Act of 2005;*

9                   “(C) *the high turnover rate of tank opera-*  
10                  *tors and other personnel;*

11                  “(D) *the frequency of improvement in un-*  
12                  *derground storage tank equipment technology;*

13                  “(E) *the nature of the businesses in which*  
14                  *the tank operators are engaged;*

15                  “(F) *the substantial differences in the scope*  
16                  *and length of training needed for the different*  
17                  *classes of persons described in subparagraphs*  
18                  *(A), (B), and (C) of paragraph (1); and*

19                  “(G) *such other factors as the Administrator*  
20                  *determines to be necessary to carry out this sec-*  
21                  *tion.*

22           “(b) *STATE PROGRAMS.*—

23                   “(1) *IN GENERAL.*—*Not later than 2 years after*  
24                   *the date on which the Administrator publishes the*  
25                   *guidelines under subsection (a)(1), each State that re-*

1        *ceives funding under this subtitle shall develop State-*  
2        *specific training requirements that are consistent*  
3        *with the guidelines developed under subsection (a)(1).*

4            *“(2) REQUIREMENTS.—State requirements de-*  
5        *scribed in paragraph (1) shall—*

6            *“(A) be consistent with subsection (a);*

7            *“(B) be developed in cooperation with tank*  
8        *owners and tank operators;*

9            *“(C) take into consideration training pro-*  
10       *grams implemented by tank owners and tank op-*  
11       *erators as of the date of enactment of this sec-*  
12       *tion; and*

13           *“(D) be appropriately communicated to*  
14       *tank owners and operators.*

15           *“(3) FINANCIAL INCENTIVE.—The Administrator*  
16       *may award to a State that develops and implements*  
17       *requirements described in paragraph (1), in addition*  
18       *to any funds that the State is entitled to receive*  
19       *under this subtitle, not more than \$200,000, to be*  
20       *used to carry out the requirements.*

21           *“(c) TRAINING.—All persons that are subject to the op-*  
22       *erator training requirements of subsection (a) shall—*

23           *“(1) meet the training requirements developed*  
24       *under subsection (b); and*

1           “(2) repeat the applicable requirements developed  
 2           under subsection (b), if the tank for which they have  
 3           primary daily on-site management responsibilities is  
 4           determined to be out of compliance with—

5                   “(A) a requirement or standard promul-  
 6                   gated by the Administrator under section 9003;  
 7                   or

8                   “(B) a requirement or standard of a State  
 9                   program approved under section 9004.”.

10       (b) *STATE PROGRAM REQUIREMENT.*—Section  
 11 9004(a) of the Solid Waste Disposal Act (42 U.S.C.  
 12 6991c(a)) is amended by striking “and” at the end of para-  
 13 graph (7), by striking the period at the end of paragraph  
 14 (8) and inserting “; and”, and by adding the following new  
 15 paragraph at the end thereof:

16                   “(9) State-specific training requirements as re-  
 17                   quired by section 9010.”.

18       (c) *ENFORCEMENT.*—Section 9006(d)(2) of such Act  
 19 (42 U.S.C. 6991e) is amended as follows:

20                   (1) By striking “or” at the end of subparagraph  
 21 (B).

22                   (2) By adding the following new subparagraph  
 23 after subparagraph (C):

1           “(D) the training requirements established by  
2       States pursuant to section 9010 (relating to operator  
3       training); or”.

4       (d) *TABLE OF CONTENTS.*—The item relating to sec-  
5       tion 9010 in table of contents for the Solid Waste Disposal  
6       Act is amended to read as follows:

      “Sec. 9010. Operator training.”.

7       **SEC. 1525. REMEDIATION FROM OXYGENATED FUEL ADDI-**  
8                               **TIVES.**

9       Section 9003(h) of the Solid Waste Disposal Act (42  
10      U.S.C. 6991b(h)) is amended as follows:

11           (1) In paragraph (7)(A)—

12                   (A) by striking “paragraphs (1) and (2) of  
13                   this subsection” and inserting “paragraphs (1),  
14                   (2), and (12)” ; and

15                   (B) by striking “and including the authori-  
16                   ties of paragraphs (4), (6), and (8) of this sub-  
17                   section” and inserting “and the authority under  
18                   sections 9011 and 9012 and paragraphs (4), (6),  
19                   and (8),”.

20           (2) By adding at the end the following:

21                   “(12) *REMEDIATION OF OXYGENATED FUEL CON-*  
22                   *TAMINATION.*—

23                               “(A) *IN GENERAL.*—The Administrator and  
24                   the States may use funds made available under  
25                   section 9014(2)(B) to carry out corrective actions

1           *with respect to a release of a fuel containing an*  
 2           *oxygenated fuel additive that presents a threat to*  
 3           *human health or welfare or the environment.*

4           “(B) *APPLICABLE AUTHORITY.*—*The Ad-*  
 5           *ministrator or a State shall carry out subpara-*  
 6           *graph (A) in accordance with paragraph (2),*  
 7           *and in the case of a State, in accordance with*  
 8           *a cooperative agreement entered into by the Ad-*  
 9           *ministrator and the State under paragraph*  
 10          *(7).”.*

11 **SEC. 1526. RELEASE PREVENTION, COMPLIANCE, AND EN-**  
 12 **FORCEMENT.**

13          *(a) RELEASE PREVENTION AND COMPLIANCE.*—*Sub-*  
 14          *title I of the Solid Waste Disposal Act (42 U.S.C. 6991 et*  
 15          *seq.) is amended by adding at the end the following:*

16 **“SEC. 9011. USE OF FUNDS FOR RELEASE PREVENTION AND**  
 17 **COMPLIANCE.**

18          *“Funds made available under section 9014(2)(D) from*  
 19          *the Trust Fund may be used to conduct inspections, issue*  
 20          *orders, or bring actions under this subtitle—*

21                 *“(1) by a State, in accordance with a grant or*  
 22                 *cooperative agreement with the Administrator, of*  
 23                 *State regulations pertaining to underground storage*  
 24                 *tanks regulated under this subtitle; and*

1           “(2) by the Administrator, for tanks regulated  
2           under this subtitle (including under a State program  
3           approved under section 9004).”.

4           (b) *GOVERNMENT-OWNED TANKS.*—Section 9003 of the  
5           *Solid Waste Disposal Act* (42 U.S.C. 6991b) is amended  
6           by adding at the end the following:

7           “(i) *GOVERNMENT-OWNED TANKS.*—

8                   “(1) *STATE COMPLIANCE REPORT.*—(A) Not later  
9                   than 2 years after the date of enactment of this sub-  
10                  section, each State that receives funding under this  
11                  subtitle shall submit to the Administrator a State  
12                  compliance report that—

13                           “(i) lists the location and owner of each un-  
14                           derground storage tank described in subpara-  
15                           graph (B) in the State that, as of the date of  
16                           submission of the report, is not in compliance  
17                           with section 9003; and

18                                   “(ii) specifies the date of the last inspection  
19                                   and describes the actions that have been and will  
20                                   be taken to ensure compliance of the under-  
21                                   ground storage tank listed under clause (i) with  
22                                   this subtitle.

23                           “(B) An underground storage tank described in  
24                           this subparagraph is an underground storage tank  
25                           that is—

1                   “(i) regulated under this subtitle; and

2                   “(ii) owned or operated by the Federal,  
3                   State, or local government.

4                   “(C) The Administrator shall make each report,  
5                   received under subparagraph (A), available to the  
6                   public through an appropriate media.

7                   “(2) FINANCIAL INCENTIVE.—The Administrator  
8                   may award to a State that develops a report de-  
9                   scribed in paragraph (1), in addition to any other  
10                  funds that the State is entitled to receive under this  
11                  subtitle, not more than \$50,000, to be used to carry  
12                  out the report.

13                  “(3) NOT A SAFE HARBOR.—This subsection does  
14                  not relieve any person from any obligation or require-  
15                  ment under this subtitle.”.

16                  “(c) PUBLIC RECORD.—Section 9002 of the Solid Waste  
17                  Disposal Act (42 U.S.C. 6991a) is amended by adding at  
18                  the end the following:

19                  “(d) PUBLIC RECORD.—

20                  “(1) IN GENERAL.—The Administrator shall re-  
21                  quire each State that receives Federal funds to carry  
22                  out this subtitle to maintain, update at least annu-  
23                  ally, and make available to the public, in such man-  
24                  ner and form as the Administrator shall prescribe



1       *(after consultation with States), a record of under-*  
 2       *ground storage tanks regulated under this subtitle.*

3               “(2) *CONSIDERATIONS.—To the maximum extent*  
 4       *practicable, the public record of a State, respectively,*  
 5       *shall include, for each year—*

6                       “(A) *the number, sources, and causes of un-*  
 7       *derground storage tank releases in the State;*

8                       “(B) *the record of compliance by under-*  
 9       *ground storage tanks in the State with—*

10                               “(i) *this subtitle; or*

11                               “(ii) *an applicable State program ap-*  
 12       *proved under section 9004; and*

13                       “(C) *data on the number of underground*  
 14       *storage tank equipment failures in the State.”.*

15       “(d) *INCENTIVE FOR PERFORMANCE.—Section 9006 of*  
 16       *the Solid Waste Disposal Act (42 U.S.C. 6991e) is amended*  
 17       *by adding at the end the following:*

18               “(e) *INCENTIVE FOR PERFORMANCE.—Both of the fol-*  
 19       *lowing may be taken into account in determining the terms*  
 20       *of a civil penalty under subsection (d):*

21                       “(1) *The compliance history of an owner or oper-*  
 22       *ator in accordance with this subtitle or a program*  
 23       *approved under section 9004.*

24                       “(2) *Any other factor the Administrator con-*  
 25       *siders appropriate.”.*

1       (e) *TABLE OF CONTENTS.*—*The table of contents for*  
 2 *such subtitle I is amended by adding the following new item*  
 3 *at the end thereof:*

*“Sec. 9011. Use of funds for release prevention and compliance.”.*

4 **SEC. 1527. DELIVERY PROHIBITION.**

5       (a) *IN GENERAL.*—*Subtitle I of the Solid Waste Dis-*  
 6 *posal Act (42 U.S.C. 6991 et seq.) is amended by adding*  
 7 *at the end the following:*

8 **“SEC. 9012. DELIVERY PROHIBITION.**

9       “(a) *REQUIREMENTS.*—

10           “(1) *PROHIBITION OF DELIVERY OR DEPOSIT.*—  
 11 *Beginning 2 years after the date of enactment of this*  
 12 *section, it shall be unlawful to deliver to, deposit into,*  
 13 *or accept a regulated substance into an underground*  
 14 *storage tank at a facility which has been identified by*  
 15 *the Administrator or a State implementing agency to*  
 16 *be ineligible for fuel delivery or deposit.*

17           “(2) *GUIDANCE.*—*Within 1 year after the date of*  
 18 *enactment of this section, the Administrator and*  
 19 *States that receive funding under this subtitle shall,*  
 20 *in consultation with the underground storage tank*  
 21 *owner and product delivery industries, for territory*  
 22 *for which they are the primary implementing agen-*  
 23 *cies, publish guidelines detailing the specific processes*  
 24 *and procedures they will use to implement the provi-*

1        *sions of this section. The processes and procedures in-*  
2        *clude, at a minimum—*

3                *“(A) the criteria for determining which un-*  
4                *derground storage tank facilities are ineligible*  
5                *for delivery or deposit;*

6                *“(B) the mechanisms for identifying which*  
7                *facilities are ineligible for delivery or deposit to*  
8                *the underground storage tank owning and fuel*  
9                *delivery industries;*

10               *“(C) the process for reclassifying ineligible*  
11               *facilities as eligible for delivery or deposit; and*

12               *“(D) a delineation of, or a process for deter-*  
13               *mining, the specified geographic areas subject to*  
14               *paragraph (4).*

15               *“(3) DELIVERY PROHIBITION NOTICE.—*

16               *“(A) ROSTER.—The Administrator and*  
17               *each State implementing agency that receives*  
18               *funding under this subtitle shall establish within*  
19               *24 months after the date of enactment of this sec-*  
20               *tion a Delivery Prohibition Roster listing under-*  
21               *ground storage tanks under the Administrator’s*  
22               *or the State’s jurisdiction that are determined to*  
23               *be ineligible for delivery or deposit pursuant to*  
24               *paragraph (2).*

1           “(B) *NOTIFICATION.*—*The Administrator*  
2           *and each State, as appropriate, shall make read-*  
3           *ily known, to underground storage tank owners*  
4           *and operators and to product delivery industries,*  
5           *the underground storage tanks listed on a Deliv-*  
6           *ery Prohibition Roster by:*

7                   “(i) *posting such Rosters, including the*  
8                   *physical location and street address of each*  
9                   *listed underground storage tank, on official*  
10                  *web sites and, if the Administrator or the*  
11                  *State so chooses, other electronic means;*

12                  “(ii) *updating these Rosters periodi-*  
13                  *cally; and*

14                  “(iii) *installing a tamper-proof tag,*  
15                  *seal, or other device blocking the fill pipes*  
16                  *of such underground storage tanks to pre-*  
17                  *vent the delivery of product into such un-*  
18                  *derground storage tanks.*

19           “(C) *ROSTER UPDATES.*—*The Adminis-*  
20           *trator and the State shall update the Delivery*  
21           *Prohibition Rosters as appropriate, but not less*  
22           *than once a month on the first day of the month.*

23           “(D) *TAMPERING WITH DEVICE.*—

24                   “(i) *PROHIBITION.*—*It shall be unlaw-*  
25                  *ful for any person, other than an authorized*

1           *representative of the Administrator or a*  
2           *State, as appropriate, to remove, tamper*  
3           *with, destroy, or damage a device installed*  
4           *by the Administrator or a State, as appro-*  
5           *priate, under subparagraph (B)(iii) of this*  
6           *subsection.*

7           “(ii) *CIVIL PENALTIES.—Any person*  
8           *violating clause (i) of this subparagraph*  
9           *shall be subject to a civil penalty not to ex-*  
10           *ceed \$10,000 for each violation.*

11           “(4) *LIMITATION.—*

12           “(A) *RURAL AND REMOTE AREAS.—Subject*  
13           *to subparagraph (B), the Administrator or a*  
14           *State shall not include an underground storage*  
15           *tank on a Delivery Prohibition Roster under*  
16           *paragraph (3) if an urgent threat to public*  
17           *health, as determined by the Administrator, does*  
18           *not exist and if such a delivery prohibition*  
19           *would jeopardize the availability of, or access to,*  
20           *fuel in any rural and remote areas.*

21           “(B) *APPLICABILITY OF LIMITATION.—The*  
22           *limitation under subparagraph (A) shall apply*  
23           *only during the 180-day period following the*  
24           *date of a determination by the Administrator or*  
25           *the appropriate State that exercising the author-*

1           ity of paragraph (3) is limited by subparagraph  
2           (A).

3           “(b) *EFFECT ON STATE AUTHORITY.*—Nothing in this  
4   section shall affect the authority of a State to prohibit the  
5   delivery of a regulated substance to an underground storage  
6   tank.

7           “(c) *DEFENSE TO VIOLATION.*—A person shall not be  
8   in violation of subsection (a)(1) if the underground storage  
9   tank into which a regulated substance is delivered is not  
10   listed on the Administrator’s or the appropriate State’s  
11   Prohibited Delivery Roster 7 calendar days prior to the de-  
12   livery being made.”.

13          (b) *ENFORCEMENT.*—Section 9006(d)(2) of such Act  
14   (42 U.S.C. 6991e(d)(2)) is amended as follows:

15           (1) *By adding the following new subparagraph*  
16   *after subparagraph (D):*

17           “(E) *the delivery prohibition requirement estab-*  
18   *lished by section 9012,*”.

19           (2) *By adding the following new sentence at the*  
20   *end thereof: “Any person making or accepting a deliv-*  
21   *ery or deposit of a regulated substance to an under-*  
22   *ground storage tank at an ineligible facility in viola-*  
23   *tion of section 9012 shall also be subject to the same*  
24   *civil penalty for each day of such violation.*”.

1       (c) *TABLE OF CONTENTS.*—*The table of contents for*  
 2 *such subtitle I is amended by adding the following new item*  
 3 *at the end thereof:*

      “*Sec. 9012. Delivery prohibition.*”.

4   **SEC. 1528. FEDERAL FACILITIES.**

5       *Section 9007 of the Solid Waste Disposal Act (42*  
 6 *U.S.C. 6991f) is amended to read as follows:*

7   **“SEC. 9007. FEDERAL FACILITIES.**

8       “(a) *IN GENERAL.*—*Each department, agency, and in-*  
 9 *strumentality of the executive, legislative, and judicial*  
 10 *branches of the Federal Government (1) having jurisdiction*  
 11 *over any underground storage tank or underground storage*  
 12 *tank system, or (2) engaged in any activity resulting, or*  
 13 *which may result, in the installation, operation, manage-*  
 14 *ment, or closure of any underground storage tank, release*  
 15 *response activities related thereto, or in the delivery, accept-*  
 16 *ance, or deposit of any regulated substance to an under-*  
 17 *ground storage tank or underground storage tank system*  
 18 *shall be subject to, and comply with, all Federal, State,*  
 19 *interstate, and local requirements, both substantive and*  
 20 *procedural (including any requirement for permits or re-*  
 21 *porting or any provisions for injunctive relief and such*  
 22 *sanctions as may be imposed by a court to enforce such*  
 23 *relief), respecting underground storage tanks in the same*  
 24 *manner, and to the same extent, as any person is subject*  
 25 *to such requirements, including the payment of reasonable*

1 service charges. The Federal, State, interstate, and local  
2 substantive and procedural requirements referred to in this  
3 subsection include, but are not limited to, all administra-  
4 tive orders and all civil and administrative penalties and  
5 fines, regardless of whether such penalties or fines are puni-  
6 tive or coercive in nature or are imposed for isolated, inter-  
7 mittent, or continuing violations. The United States hereby  
8 expressly waives any immunity otherwise applicable to the  
9 United States with respect to any such substantive or proce-  
10 dural requirement (including, but not limited to, any in-  
11 junctive relief, administrative order or civil or administra-  
12 tive penalty or fine referred to in the preceding sentence,  
13 or reasonable service charge). The reasonable service charges  
14 referred to in this subsection include, but are not limited  
15 to, fees or charges assessed in connection with the processing  
16 and issuance of permits, renewal of permits, amendments  
17 to permits, review of plans, studies, and other documents,  
18 and inspection and monitoring of facilities, as well as any  
19 other nondiscriminatory charges that are assessed in con-  
20 nection with a Federal, State, interstate, or local under-  
21 ground storage tank regulatory program. Neither the  
22 United States, nor any agent, employee, or officer thereof,  
23 shall be immune or exempt from any process or sanction  
24 of any State or Federal Court with respect to the enforce-  
25 ment of any such injunctive relief. No agent, employee, or



1 officer of the United States shall be personally liable for  
2 any civil penalty under any Federal, State, interstate, or  
3 local law concerning underground storage tanks with re-  
4 spect to any act or omission within the scope of the official  
5 duties of the agent, employee, or officer. An agent, employee,  
6 or officer of the United States shall be subject to any crimi-  
7 nal sanction (including, but not limited to, any fine or im-  
8 prisonment) under any Federal or State law concerning un-  
9 derground storage tanks, but no department, agency, or in-  
10 strumentality of the executive, legislative, or judicial branch  
11 of the Federal Government shall be subject to any such sanc-  
12 tion. The President may exempt any underground storage  
13 tank of any department, agency, or instrumentality in the  
14 executive branch from compliance with such a requirement  
15 if he determines it to be in the paramount interest of the  
16 United States to do so. No such exemption shall be granted  
17 due to lack of appropriation unless the President shall have  
18 specifically requested such appropriation as a part of the  
19 budgetary process and the Congress shall have failed to  
20 make available such requested appropriation. Any exemp-  
21 tion shall be for a period not in excess of one year, but  
22 additional exemptions may be granted for periods not to  
23 exceed one year upon the President's making a new deter-  
24 mination. The President shall report each January to the  
25 Congress all exemptions from the requirements of this sec-

1 *tion granted during the preceding calendar year, together*  
2 *with his reason for granting each such exemption.*

3 “(b) *REVIEW OF AND REPORT ON FEDERAL UNDER-*  
4 *GROUND STORAGE TANKS.—*

5 “(1) *REVIEW.—Not later than 12 months after*  
6 *the date of enactment of the Underground Storage*  
7 *Tank Compliance Act of 2005, each Federal agency*  
8 *that owns or operates 1 or more underground storage*  
9 *tanks, or that manages land on which 1 or more un-*  
10 *derground storage tanks are located, shall submit to*  
11 *the Administrator, the Committee on Energy and*  
12 *Commerce of the United States House of Representa-*  
13 *tives, and the Committee on the Environment and*  
14 *Public Works of the United States Senate a compli-*  
15 *ance strategy report that—*

16 “(A) *lists the location and owner of each*  
17 *underground storage tank described in this para-*  
18 *graph;*

19 “(B) *lists all tanks that are not in compli-*  
20 *ance with this subtitle that are owned or oper-*  
21 *ated by the Federal agency;*

22 “(C) *specifies the date of the last inspection*  
23 *by a State or Federal inspector of each under-*  
24 *ground storage tank owned or operated by the*  
25 *agency;*

1           “(D) lists each violation of this subtitle re-  
 2           specting any underground storage tank owned or  
 3           operated by the agency;

4           “(E) describes the operator training that  
 5           has been provided to the operator and other per-  
 6           sons having primary daily on-site management  
 7           responsibility for the operation and maintenance  
 8           of underground storage tanks owned or operated  
 9           by the agency; and

10          “(F) describes the actions that have been  
 11          and will be taken to ensure compliance for each  
 12          underground storage tank identified under sub-  
 13          paragraph (B).

14          “(2) NOT A SAFE HARBOR.—This subsection does  
 15          not relieve any person from any obligation or require-  
 16          ment under this subtitle.”.

17   **SEC. 1529. TANKS ON TRIBAL LANDS.**

18          (a) IN GENERAL.—Subtitle I of the Solid Waste Dis-  
 19          posal Act (42 U.S.C. 6991 et seq.) is amended by adding  
 20          the following at the end thereof:

21   **“SEC. 9013. TANKS ON TRIBAL LANDS.**

22          “(a) STRATEGY.—The Administrator, in coordination  
 23          with Indian tribes, shall, not later than 1 year after the  
 24          date of enactment of this section, develop and implement  
 25          a strategy—

1           “(1) giving priority to releases that present the  
2           greatest threat to human health or the environment,  
3           to take necessary corrective action in response to re-  
4           leases from leaking underground storage tanks located  
5           wholly within the boundaries of—

6                       “(A) an Indian reservation; or

7                       “(B) any other area under the jurisdiction  
8                       of an Indian tribe; and

9           “(2) to implement and enforce requirements con-  
10          cerning underground storage tanks located wholly  
11          within the boundaries of—

12                      “(A) an Indian reservation; or

13                      “(B) any other area under the jurisdiction  
14                      of an Indian tribe.

15          “(b) *REPORT*.—Not later than 2 years after the date  
16          of enactment of this section, the Administrator shall submit  
17          to Congress a report that summarizes the status of imple-  
18          mentation and enforcement of this subtitle in areas located  
19          wholly within—

20                      “(1) the boundaries of Indian reservations; and

21                      “(2) any other areas under the jurisdiction of an  
22          Indian tribe.

23          The Administrator shall make the report under this sub-  
24          section available to the public.

1       “(c) *NOT A SAFE HARBOR.*—*This section does not re-*  
 2 *lieve any person from any obligation or requirement under*  
 3 *this subtitle.*

4       “(d) *STATE AUTHORITY.*—*Nothing in this section ap-*  
 5 *plies to any underground storage tank that is located in*  
 6 *an area under the jurisdiction of a State, or that is subject*  
 7 *to regulation by a State, as of the date of enactment of this*  
 8 *section.”.*

9       (b) *TABLE OF CONTENTS.*—*The table of contents for*  
 10 *such subtitle I is amended by adding the following new item*  
 11 *at the end thereof:*

“Sec. 9013. *Tanks on Tribal lands.*”.

12       **SEC. 1530. ADDITIONAL MEASURES TO PROTECT GROUND-**  
 13                               **WATER.**

14       (a) *IN GENERAL.*—*Section 9003 of the Solid Waste*  
 15 *Disposal Act (42 U.S.C. 6991b) is amended by adding the*  
 16 *following new subsection at the end:*

17       “(i) *ADDITIONAL MEASURES TO PROTECT GROUND-*  
 18 *WATER FROM CONTAIMINATION.*—*The Administrator shall*  
 19 *require each State that receives funding under this subtitle*  
 20 *to require one of the following:*

21               “(1) *TANK AND PIPING SECONDARY CONTAIN-*  
 22 *MENT.*—(A) *Each new underground storage tank, or*  
 23 *pipng connected to any such new tank, installed*  
 24 *after the effective date of this subsection, or any exist-*  
 25 *ing underground storage tank, or existing piping con-*

1        *nected to such existing tank, that is replaced after the*  
2        *effective date of this subsection, shall be secondarily*  
3        *contained and monitored for leaks if the new or re-*  
4        *placed underground storage tank or piping is within*  
5        *1,000 feet of any existing community water system or*  
6        *any existing potable drinking water well.*

7            *“(B) In the case of a new underground storage*  
8        *tank system consisting of one or more underground*  
9        *storage tanks and connected by piping, subparagraph*  
10       *(A) shall apply to all underground storage tanks and*  
11       *connected pipes comprising such system.*

12           *“(C) In the case of a replacement of an existing*  
13        *underground storage tank or existing piping con-*  
14        *nected to the underground storage tank, subparagraph*  
15        *(A) shall apply only to the specific underground stor-*  
16        *age tank or piping being replaced, not to other under-*  
17        *ground storage tanks and connected pipes comprising*  
18        *such system.*

19           *“(D) Each installation of a new motor fuel dis-*  
20        *penser system, after the effective date of this sub-*  
21        *section, shall include under-dispenser spill contain-*  
22        *ment if the new dispenser is within 1,000 feet of any*  
23        *existing community water system or any existing po-*  
24        *table drinking water well.*

1           “(E) *This paragraph shall not apply to repairs*  
2           *to an underground storage tank, piping, or dispenser*  
3           *that are meant to restore a tank, pipe, or dispenser*  
4           *to operating condition*

5           “(F) *As used in this subsection:*

6                   “(i) *The term ‘secondarily contained’ means*  
7                   *a release detection and prevention system that*  
8                   *meets the requirements of 40 CFR 280.43(g), but*  
9                   *shall not include under-dispenser spill contain-*  
10                  *ment or control systems.*

11                  “(ii) *The term ‘underground storage tank’*  
12                  *has the meaning given to it in section 9001, ex-*  
13                  *cept that such term does not include tank com-*  
14                  *binations or more than a single underground*  
15                  *pipe connected to a tank.*

16                  “(iii) *The term ‘installation of a new motor*  
17                  *fuel dispenser system’ means the installation of*  
18                  *a new motor fuel dispenser and the equipment*  
19                  *necessary to connect the dispenser to the under-*  
20                  *ground storage tank system, but does not mean*  
21                  *the installation of a motor fuel dispenser in-*  
22                  *stalled separately from the equipment need to*  
23                  *connect the dispenser to the underground storage*  
24                  *tank system.*

1           “(G) *The Administrator may issue regulations*  
2           *or guidelines implementing the requirements of this*  
3           *subsection.*

4           “(2) *EVIDENCE OF FINANCIAL RESPONSIBILITY*  
5           *AND CERTIFICATION.—*

6           “(A) *MANUFACTURER AND INSTALLER FI-*  
7           *NANCIAL RESPONSIBILITY.—A person that manu-*  
8           *factures an underground storage tank or piping*  
9           *for an underground storage tank system or that*  
10           *installs an underground storage tank system is*  
11           *required to maintain evidence of financial re-*  
12           *sponsibility under section 9003(d) in order to*  
13           *provide for the costs of corrective actions directly*  
14           *related to releases caused by improper manufac-*  
15           *ture or installation unless the person can dem-*  
16           *onstrate themselves to be already covered as an*  
17           *owner or operator of an underground storage*  
18           *tank under section 9003.*

19           “(B) *INSTALLER CERTIFICATION.—The Ad-*  
20           *ministrator and each State that receives funding*  
21           *under this subtitle, as appropriate, shall require*  
22           *that a person that installs an underground stor-*  
23           *age tank system is—*

24                   “(i) *certified or licensed by the tank*  
25                   *and piping manufacturer;*



1                   “(ii) certified or licensed by the Ad-  
2                   ministrators or a State, as appropriate;

3                   “(iii) has their underground storage  
4                   tank system installation certified by a reg-  
5                   istered professional engineer with education  
6                   and experience in underground storage tank  
7                   system installation;

8                   “(iv) has had their installation of the  
9                   underground storage tank inspected and ap-  
10                  proved by the Administrator or the State,  
11                  as appropriate;

12                  “(v) compliant with a code of practice  
13                  developed by a nationally recognized asso-  
14                  ciation of independent testing laboratory  
15                  and in accordance with the manufacturers  
16                  instructions; or

17                  “(vi) compliant with another method  
18                  that is determined by the Administrator or  
19                  a State, as appropriate, to be no less protec-  
20                  tive of human health and the environ-  
21                  ment.”.

22                  (b) *EFFECTIVE DATE.*—This subsection shall take ef-  
23                  fect 18 months after the date of enactment of this subsection

24                  (c) *PROMULGATION OF REGULATIONS OR GUIDE-*  
25                  *LINES.*—The Administrator shall issue regulations or

1 *guidelines implementing the requirements of this subsection,*  
 2 *including guidance to differentiate between the terms “re-*  
 3 *pair” and “replace” for the purposes of section 9003(i)(1)*  
 4 *of the Solid Waste Disposal Act.*

5 (d) *PENALTIES.*—Section 9006(d)(2) of such Act (42  
 6 U.S.C. 6991e(d)(2)) is amended by adding the following  
 7 new subparagraph after subparagraph (C):

8 “(D) the requirements establishd in section  
 9 9003(i),”.

10 **SEC. 1531. AUTHORIZATION OF APPROPRIATIONS.**

11 (a) *IN GENERAL.*—Subtitle I of the Solid Waste Dis-  
 12 posal Act (42 U.S.C. 6991 et seq.) is amended by adding  
 13 at the end the following:

14 **“SEC. 9014. AUTHORIZATION OF APPROPRIATIONS.**

15 “There are authorized to be appropriated to the Ad-  
 16 ministrator the following amounts:

17 “(1) To carry out subtitle I (except sections  
 18 9003(h), 9005(c), 9011 and 9012) \$50,000,000 for  
 19 each of fiscal years 2005 through 2009.

20 “(2) From the Trust Fund, notwithstanding sec-  
 21 tion 9508(c)(1) of the Internal Revenue Code of 1986:

22 “(A) to carry out section 9003(h) (except  
 23 section 9003(h)(12)) \$200,000,000 for each of fis-  
 24 cal years 2005 through 2009;

1           “(B) to carry out section 9003(h)(12),  
 2           \$200,000,000 for each of fiscal years 2005  
 3           through 2009;

4           “(C) to carry out sections 9004(f) and  
 5           9005(c) \$100,000,000 for each of fiscal years  
 6           2005 through 2009; and

7           “(D) to carry out sections 9011 and 9012  
 8           \$55,000,000 for each of fiscal years 2005 through  
 9           2009.”.

10       (b) *TABLE OF CONTENTS.*—The table of contents for  
 11       such subtitle I is amended by adding the following new item  
 12       at the end thereof:

          “Sec. 9014. Authorization of appropriations.”.

13       **SEC. 1532. CONFORMING AMENDMENTS.**

14       (a) *IN GENERAL.*—Section 9001 of the Solid Waste  
 15       Disposal Act (42 U.S.C. 6991) is amended as follows:

16           (1) By striking “For the purposes of this sub-  
 17           title—” and inserting “In this subtitle:”.

18           (2) By redesignating paragraphs (1), (2), (3),  
 19           (4), (5), (6), (7), and (8) as paragraphs (10), (7), (4),  
 20           (3), (8), (5), (2), and (6), respectively.

21           (3) By inserting before paragraph (2) (as redes-  
 22           ignated by paragraph (2) of this subsection) the fol-  
 23           lowing:

24           “(1) *INDIAN TRIBE.*—

1                   “(A) *IN GENERAL.*—The term ‘Indian tribe’  
 2                   means any Indian tribe, band, nation, or other  
 3                   organized group or community that is recognized  
 4                   as being eligible for special programs and serv-  
 5                   ices provided by the United States to Indians be-  
 6                   cause of their status as Indians.

7                   “(B) *INCLUSIONS.*—The term ‘Indian tribe’  
 8                   includes an Alaska Native village, as defined in  
 9                   or established under the Alaska Native Claims  
 10                  Settlement Act (43 U.S.C. 1601 et seq.).”.

11                  (4) *By inserting after paragraph (8) (as redesign-*  
 12                  *ated by paragraph (2) of this subsection) the fol-*  
 13                  *lowing:*

14                  “(9) *TRUST FUND.*—The term ‘Trust Fund’  
 15                  means the Leaking Underground Storage Tank Trust  
 16                  Fund established by section 9508 of the Internal Rev-  
 17                  enue Code of 1986.”.

18                  (b) *CONFORMING AMENDMENTS.*—The Solid Waste  
 19                  Disposal Act (42 U.S.C. 6901 and following) is amended  
 20                  as follows:

21                  (1) Section 9003(f) (42 U.S.C. 6991b(f)) is  
 22                  amended—

23                         (A) in paragraph (1), by striking  
 24                         “9001(2)(B)” and inserting “9001(7)(B)”; and

1                   (B) in paragraphs (2) and (3), by striking  
 2                   “9001(2)(A)” each place it appears and insert-  
 3                   ing “9001(7)(A)”.

4                   (2) Section 9003(h) (42 U.S.C. 6991b(h)) is  
 5                   amended in paragraphs (1), (2)(C), (7)(A), and (11)  
 6                   by striking “Leaking Underground Storage Tank  
 7                   Trust Fund” each place it appears and inserting  
 8                   “Trust Fund”.

9                   (3) Section 9009 (42 U.S.C. 6991h) is amend-  
 10                  ed—

11                   (A) in subsection (a), by striking  
 12                   “9001(2)(B)” and inserting “9001(7)(B)”; and

13                   (B) in subsection (d), by striking “section  
 14                   9001(1) (A) and (B)” and inserting “subpara-  
 15                   graphs (A) and (B) of section 9001(10)”.

16 **SEC. 1533. TECHNICAL AMENDMENTS.**

17                  *The Solid Waste Disposal Act is amended as follows:*

18                   (1) Section 9001(4)(A) (42 U.S.C. 6991(4)(A)) is  
 19                   amended by striking “sustances” and inserting “sub-  
 20                   stances”.

21                   (2) Section 9003(f)(1) (42 U.S.C. 6991b(f)(1)) is  
 22                   amended by striking “subsection (c) and (d) of this  
 23                   section” and inserting “subsections (c) and (d)”.

24                   (3) Section 9004(a) (42 U.S.C. 6991c(a)) is  
 25                   amended by striking “in 9001(2) (A) or (B) or both”

1       and inserting “in subparagraph (A) or (B) of section  
2       9001(7)”.

3               (4) Section 9005 (42 U.S.C. 6991d) is amend-  
4       ed—

5               (A) in subsection (a), by striking “study  
6       taking” and inserting “study, taking”;

7               (B) in subsection (b)(1), by striking  
8       “relevent” and inserting “relevant”; and

9               (C) in subsection (b)(4), by striking  
10       “Environmental” and inserting “Environmental”.

### 11       ***Subtitle C—Boutique Fuels***

#### 12       ***SEC. 1541. REDUCING THE PROLIFERATION OF BOUTIQUE*** 13       ***FUELS.***

14       (a) *TEMPORARY WAIVERS DURING SUPPLY EMER-*  
15       *GENCIES.*—Section 211(c)(4)(C) of the Clean Air Act (42  
16       U.S.C. 7545(c)(4)(C)) is amended by inserting “(i)” after  
17       “(C)” and by adding the following new clauses at the end  
18       thereof:

19               “(ii) The Administrator may temporarily waive a con-  
20       trol or prohibition respecting the use of a fuel or fuel addi-  
21       tive required or regulated by the Administrator pursuant  
22       to subsection (c), (h), (i), (k), or (m) of this section or pre-  
23       scribed in an applicable implementation plan under section  
24       110 approved by the Administrator under clause (i) of this  
25       subparagraph if, after consultation with, and concurrence

1 *by, the Secretary of Energy, the Administrator determines*  
2 *that—*

3           “(I) *extreme and unusual fuel or fuel additive*  
4 *supply circumstances exist in a State or region of the*  
5 *Nation which prevent the distribution of an adequate*  
6 *supply of the fuel or fuel additive to consumers;*

7           “(II) *such extreme and unusual fuel and fuel ad-*  
8 *ditive supply circumstances are the result of a nat-*  
9 *ural disaster, an Act of God, a pipeline or refinery*  
10 *equipment failure, or another event that could not*  
11 *reasonably have been foreseen or prevented and not*  
12 *the lack of prudent planning on the part of the sup-*  
13 *pliers of the fuel or fuel additive to such State or re-*  
14 *gion; and*

15           “(III) *it is in the public interest to grant the*  
16 *waiver (for example, when a waiver is necessary to*  
17 *meet projected temporary shortfalls in the supply of*  
18 *the fuel or fuel additive in a State or region of the*  
19 *Nation which cannot otherwise be compensated for).*

20           “(iii) *If the Administrator makes the determinations*  
21 *required under clause (ii), such a temporary extreme and*  
22 *unusual fuel and fuel additive supply circumstances waiver*  
23 *shall be permitted only if—*

1           “(I) the waiver applies to the smallest geographic  
2           area necessary to address the extreme and unusual  
3           fuel and fuel additive supply circumstances;

4           “(II) the waiver is effective for a period of 20  
5           calendar days or, if the Administrator determines  
6           that a shorter waiver period is adequate, for the  
7           shortest practicable time period necessary to permit  
8           the correction of the extreme and unusual fuel and  
9           fuel additive supply circumstances and to mitigate  
10          impact on air quality;

11          “(III) the waiver permits a transitional period,  
12          the exact duration of which shall be determined by the  
13          Administrator, after the termination of the temporary  
14          waiver to permit wholesalers and retailers to blend  
15          down their wholesale and retail inventory;

16          “(IV) the waiver applies to all persons in the  
17          motor fuel distribution system; and

18          “(V) the Administrator has given public notice  
19          to all parties in the motor fuel distribution system,  
20          and local and State regulators, in the State or region  
21          to be covered by the waiver.

22          The term ‘motor fuel distribution system’ as used in this  
23          clause shall be defined by the Administrator through rule-  
24          making.



1       “(iv) Within 180 days of the date of enactment of this  
 2 clause, the Administrator shall promulgate regulations to  
 3 implement clauses (ii) and (iii).

4       “(v) Nothing in this subparagraph shall—

5               “(I) limit or otherwise affect the application of  
 6 any other waiver authority of the Administrator pur-  
 7 suant to this section or pursuant to a regulation pro-  
 8 mulgated pursuant to this section; and

9               “(II) subject any State or person to an enforce-  
 10 ment action, penalties, or liability solely arising from  
 11 actions taken pursuant to the issuance of a waiver  
 12 under this subparagraph.”.

13       (b) *LIMIT ON NUMBER OF BOUTIQUE FUELS.*—Section  
 14 211(c)(4)(C) of the Clean Air Act (42 U.S.C. 7545(c)(4)),  
 15 as amended by subsection (a), is further amended by adding  
 16 at the end the following:

17       “(vi)(I) The Administrator shall have no authority,  
 18 when considering a State implementation plan or a State  
 19 implementation plan revision, to approve under this para-  
 20 graph any fuel included in such plan or revision if the effect  
 21 of such approval increases the total number of fuels ap-  
 22 proved under this paragraph as of September 1, 2004, in  
 23 all State implementation plans.

24       “(II) The Administrator, in consultation with the Sec-  
 25 retary of Energy, shall determine the total number of fuels

1 approved under this paragraph as of September 1, 2004,  
2 in all State implementation plans and shall publish a list  
3 of such fuels, including the states and Petroleum Adminis-  
4 tration for Defense District in which they are used, in the  
5 Federal Register for public review and comment no later  
6 than 90 days after enactment.

7 “(III) The Administrator shall remove a fuel from the  
8 list published under subclause (II) if a fuel ceases to be in-  
9 cluded in a State implementation plan or if a fuel in a  
10 State implementation plan is identical to a Federal fuel  
11 formulation implemented by the Administrator, but the Ad-  
12 ministrator shall not reduce the total number of fuels au-  
13 thorized under the list published under subclause (II).

14 “(IV) Subclause (I) shall not limit the Administrator’s  
15 authority to approve a control or prohibition respecting  
16 any new fuel under this paragraph in a State implementa-  
17 tion plan or revision to a State implementation plan if such  
18 new fuel:

19 “(aa) completely replaces a fuel on the list pub-  
20 lished under subclause (II); or

21 “(bb) does not increase the total number of fuels  
22 on the list published under subclause (II) as of Sep-  
23 tember 1, 2004.

24 In the event that the total number of fuels on the list pub-  
25 lished under subclause (II) at the time of the Administra-

1 *tor's consideration of a control or prohibition respecting a*  
2 *new fuel is lower than the total number of fuels on such*  
3 *list as of September 1, 2004, the Administrator may ap-*  
4 *prove a control or prohibition respecting a new fuel under*  
5 *this subclause if the Administrator, after consultation with*  
6 *the Secretary of Energy, publishes in the Federal Register*  
7 *after notice and comment a finding that, in the Adminis-*  
8 *trator's judgment, such control or prohibition respecting a*  
9 *new fuel will not cause fuel supply or distribution interrup-*  
10 *tions or have a significant adverse impact on fuel*  
11 *producibility in the affected area or contiguous areas.*

12       “(V) *The Administrator shall have no authority under*  
13 *this paragraph, when considering any particular State's*  
14 *implementation plan or a revision to that State's imple-*  
15 *mentation plan, to approve any fuel unless that fuel was,*  
16 *as of the date of such consideration, approved in at least*  
17 *one State implementation plan in the applicable Petroleum*  
18 *Administration for Defense District. However, the Adminis-*  
19 *trator may approve as part of a State implementation plan*  
20 *or State implementation plan revision a fuel with a sum-*  
21 *meritime Reid Vapor Pressure of 7.0 psi. In no event shall*  
22 *such approval by the Administrator cause an increase in*  
23 *the total number of fuels on the list published under sub-*  
24 *clause (II).*

1       “(VI) *Nothing in this clause shall be construed to have*  
 2 *any effect regarding any available authority of States to*  
 3 *require the use of any fuel additive registered in accordance*  
 4 *with subsection (b), including any fuel additive registered*  
 5 *in accordance with subsection (b) after the enactment of this*  
 6 *subclause.*”.

7       (c) *STUDY AND REPORT TO CONGRESS ON BOUTIQUE*  
 8 *FUELS.*—

9           (1) *JOINT STUDY.*—*The Administrator of the*  
 10 *Environmental Protection Agency and the Secretary*  
 11 *of Energy shall undertake a study of the effects on air*  
 12 *quality, on the number of fuel blends, on fuel avail-*  
 13 *ability, on fuel fungibility, and on fuel costs of the*  
 14 *State plan provisions adopted pursuant to section*  
 15 *211(c)(4)(C) of the Clean Air Act (42 U.S.C.*  
 16 *7545(c)(4)(C)).*

17          (2) *FOCUS OF STUDY.*—*The primary focus of the*  
 18 *study required under paragraph (1) shall be to deter-*  
 19 *mine how to develop a Federal fuels system that*  
 20 *maximizes motor fuel fungibility and supply, pre-*  
 21 *serves air quality standards, and reduces motor fuel*  
 22 *price volatility that results from the proliferation of*  
 23 *boutique fuels, and to recommend to Congress such*  
 24 *legislative changes as are necessary to implement such*  
 25 *a system. The study should include the impacts on*

1        *overall energy supply, distribution, and use as a re-*  
2        *sult of the legislative changes recommended.*

3            (3) *RESPONSIBILITY OF ADMINISTRATOR.—In*  
4        *carrying out the study required by this section, the*  
5        *Administrator shall coordinate obtaining comments*  
6        *from affected parties interested in the air quality im-*  
7        *pact assessment portion of the study. The Adminis-*  
8        *trator shall use sound and objective science practices,*  
9        *shall consider the best available science, and shall*  
10       *consider and include a description of the weight of the*  
11       *scientific evidence.*

12           (4) *RESPONSIBILITY OF SECRETARY.—In car-*  
13       *rying out the study required by this section, the Sec-*  
14       *retary shall coordinate obtaining comments from af-*  
15       *ected parties interested in the fuel availability, num-*  
16       *ber of fuel blends, fuel fungibility and fuel costs por-*  
17       *tion of the study.*

18           (5) *REPORT TO CONGRESS.—The Administrator*  
19       *and the Secretary jointly shall submit the results of*  
20       *the study required by this section in a report to the*  
21       *Congress not later than 12 months after the date of*  
22       *the enactment of this Act, together with any rec-*  
23       *ommended regulatory and legislative changes. Such*  
24       *report shall be submitted to the Committee on Energy*  
25       *and Commerce of the House of Representatives and*

1       *the Committee on Environment and Public Works of*  
2       *the Senate.*

3               (6) *AUTHORIZATION OF APPROPRIATIONS.—*

4       *There is authorized to be appropriated jointly to the*  
5       *Administrator and the Secretary \$500,000 for the*  
6       *completion of the study required under this sub-*  
7       *section.*

8       (d) *DEFINITIONS.—In this section:*

9               (1) *The term “Administrator” means the Admin-*  
10       *istrator of the Environmental Protection Agency.*

11              (2) *The term “Secretary” means the Secretary of*  
12       *Energy.*

13              (3) *The term “fuel” means gasoline, diesel fuel,*  
14       *and any other liquid petroleum product commercially*  
15       *known as gasoline and diesel fuel for use in highway*  
16       *and nonroad motor vehicles.*

17              (4) *The term “a control or prohibition respecting*  
18       *a new fuel” means a control or prohibition on the for-*  
19       *mulation, composition, or emissions characteristics of*  
20       *a fuel that would require the increase or decrease of*  
21       *a constituent in gasoline or diesel fuel.*

## ***TITLE XVI—STUDIES***

### ***SEC. 1601. STUDY ON INVENTORY OF PETROLEUM AND NATURAL GAS STORAGE.***

(a) *DEFINITION.*—For purposes of this section “petroleum” means crude oil, motor gasoline, jet fuel, distillates, and propane.

(b) *STUDY.*—The Secretary of Energy shall conduct a study on petroleum and natural gas storage capacity and operational inventory levels, nationwide and by major geographical regions.

(c) *CONTENTS.*—The study shall address—

(1) *historical normal ranges for petroleum and natural gas inventory levels;*

(2) *historical and projected storage capacity trends;*

(3) *estimated operation inventory levels below which outages, delivery slowdown, rationing, interruptions in service, or other indicators of shortage begin to appear;*

(4) *explanations for inventory levels dropping below normal ranges; and*

(5) *the ability of industry to meet United States demand for petroleum and natural gas without shortages or price spikes, when inventory levels are below normal ranges.*

1       (d) *REPORT TO CONGRESS.*—Not later than 1 year  
2 after the date of enactment of this Act, the Secretary of En-  
3 ergy shall submit a report to Congress on the results of the  
4 study, including findings and any recommendations for  
5 preventing future supply shortages.

6 **SEC. 1605. STUDY OF ENERGY EFFICIENCY STANDARDS.**

7       The Secretary of Energy shall contract with the Na-  
8 tional Academy of Sciences for a study, to be completed  
9 within 1 year after the date of enactment of this Act, to  
10 examine whether the goals of energy efficiency standards are  
11 best served by measurement of energy consumed, and effi-  
12 ciency improvements, at the actual site of energy consump-  
13 tion, or through the full fuel cycle, beginning at the source  
14 of energy production. The Secretary shall submit the report  
15 to Congress.

16 **SEC. 1606. TELECOMMUTING STUDY.**

17       (a) *STUDY REQUIRED.*—The Secretary, in consulta-  
18 tion with the Commission, the Director of the Office of Per-  
19 sonnel Management, the Administrator of General Services,  
20 and the Administrator of NTIA, shall conduct a study of  
21 the energy conservation implications of the widespread  
22 adoption of telecommuting by Federal employees in the  
23 United States.

24       (b) *REQUIRED SUBJECTS OF STUDY.*—The study re-  
25 quired by subsection (a) shall analyze the following subjects



1 *in relation to the energy saving potential of telecommuting*  
2 *by Federal employees:*

3           (1) *Reductions of energy use and energy costs in*  
4 *commuting and regular office heating, cooling, and*  
5 *other operations.*

6           (2) *Other energy reductions accomplished by tele-*  
7 *commuting.*

8           (3) *Existing regulatory barriers that hamper*  
9 *telecommuting, including barriers to broadband tele-*  
10 *communications services deployment.*

11           (4) *Collateral benefits to the environment, family*  
12 *life, and other values.*

13       (c) *REPORT REQUIRED.—The Secretary shall submit*  
14 *to the President and Congress a report on the study required*  
15 *by this section not later than 6 months after the date of*  
16 *enactment of this Act. Such report shall include a descrip-*  
17 *tion of the results of the analysis of each of the subject de-*  
18 *scribed in subsection (b).*

19       (d) *DEFINITIONS.—As used in this section:*

20           (1) *SECRETARY.—The term “Secretary” means*  
21 *the Secretary of Energy.*

22           (2) *COMMISSION.—The term “Commission”*  
23 *means the Federal Communications Commission.*

1           (3) *NTIA*.—The term “*NTIA*” means the Na-  
2           tional Telecommunications and Information Admin-  
3           istration of the Department of Commerce.

4           (4) *TELECOMMUTING*.—The term “telecom-  
5           muting” means the performance of work functions  
6           using communications technologies, thereby elimi-  
7           nating or substantially reducing the need to commute  
8           to and from traditional worksites.

9           (5) *FEDERAL EMPLOYEE*.—The term “Federal  
10          employee” has the meaning provided the term “em-  
11          ployee” by section 2105 of title 5, United States Code.

12 **SEC. 1607. LIHEAP REPORT.**

13          Not later than 1 year after the date of enactment of  
14          this Act, the Secretary of Health and Human Services shall  
15          transmit to Congress a report on how the Low-Income  
16          Home Energy Assistance Program could be used more effec-  
17          tively to prevent loss of life from extreme temperatures. In  
18          preparing such report, the Secretary shall consult with ap-  
19          propriate officials in all 50 States and the District of Co-  
20          lumbia.

21 **SEC. 1608. OIL BYPASS FILTRATION TECHNOLOGY.**

22          The Secretary of Energy and the Administrator of the  
23          Environmental Protection Agency shall—

1           (1) *conduct a joint study of the benefits of oil by-*  
2           *pass filtration technology in reducing demand for oil*  
3           *and protecting the environment;*

4           (2) *examine the feasibility of using oil bypass*  
5           *filtration technology in Federal motor vehicle fleets;*  
6           *and*

7           (3) *include in such study, prior to any deter-*  
8           *mination of the feasibility of using oil bypass filtra-*  
9           *tion technology, the evaluation of products and var-*  
10          *ious manufacturers.*

11 **SEC. 1609. TOTAL INTEGRATED THERMAL SYSTEMS.**

12       *The Secretary of Energy shall—*

13           (1) *conduct a study of the benefits of total inte-*  
14           *grated thermal systems in reducing demand for oil*  
15           *and protecting the environment; and*

16           (2) *examine the feasibility of using total inte-*  
17           *grated thermal systems in Department of Defense and*  
18           *other Federal motor vehicle fleets.*

19 **SEC. 1610. UNIVERSITY COLLABORATION.**

20       *Not later than 2 years after the date of enactment of*  
21 *this Act, the Secretary of Energy shall transmit to Congress*  
22 *a report that examines the feasibility of promoting collabo-*  
23 *rations between large institutions of higher education and*  
24 *small institutions of higher education through grants, con-*  
25 *tracts, and cooperative agreements made by the Secretary*

1 *for energy projects. The Secretary shall also consider pro-*  
2 *viding incentives for the inclusion of small institutions of*  
3 *higher education, including minority-serving institutions,*  
4 *in energy research grants, contracts, and cooperative agree-*  
5 *ments.*

6 **SEC. 1611. RELIABILITY AND CONSUMER PROTECTION AS-**  
7 **SESSMENT.**

8 *Not later than 5 years after the date of enactment of*  
9 *this Act, and each 5 years thereafter, the Federal Energy*  
10 *Regulatory Commission shall assess the effects of the exemp-*  
11 *tion of electric cooperatives and government-owned utilities*  
12 *from Commission regulation under section 201(f) of the*  
13 *Federal Power Act. The assessment shall include any effects*  
14 *on—*

15 *(1) reliability of interstate electric transmission*  
16 *networks;*

17 *(2) benefit to consumers, and efficiency, of com-*  
18 *petitive wholesale electricity markets;*

19 *(3) just and reasonable rates for electricity con-*  
20 *sumers; and*

21 *(4) the ability of the Commission to protect elec-*  
22 *tricity consumers.*

23 *If the Commission finds that the 201(f) exemption results*  
24 *in adverse effects on consumers or electric reliability, the*

1 *Commission shall make appropriate recommendations to*  
2 *Congress pursuant to section 311 of the Federal Power Act.*

3 **SEC. 1612. REPORT ON ENERGY INTEGRATION WITH LATIN**  
4 **AMERICA.**

5 *The Secretary of Energy shall submit an annual re-*  
6 *port to the Committee on Energy and Commerce of the*  
7 *United States House of Representatives and to the Com-*  
8 *mittee on Energy and Natural Resources of the United*  
9 *States Senate concerning the status of energy export devel-*  
10 *opment in Latin America and efforts by the Secretary and*  
11 *other departments and agencies of the United States to pro-*  
12 *mote energy integration with Latin America. The report*  
13 *shall contain a detailed analysis of the status of energy ex-*  
14 *port development in Mexico and a description of all signifi-*  
15 *cant efforts by the Secretary and other departments and*  
16 *agencies to promote a constructive relationship with Mexico*  
17 *regarding the development of that nation's energy capacity.*  
18 *In particular this report shall outline efforts the Secretary*  
19 *and other departments and agencies have made to ensure*  
20 *that regulatory approval and oversight of United States/*  
21 *Mexico border projects that result in the expansion of Mexi-*  
22 *can energy capacity are effectively coordinated across de-*  
23 *partments and with the Mexican government.*

1 **SEC. 1613. LOW-VOLUME GAS RESERVOIR STUDY.**

2       (a) *STUDY.*—*The Secretary of Energy shall make a*  
3 *grant to an organization of oil and gas producing States,*  
4 *specifically those containing significant numbers of mar-*  
5 *ginal oil and natural gas wells, for conducting an annual*  
6 *study of low-volume natural gas reservoirs. Such organiza-*  
7 *tion shall work with the State geologist of each State being*  
8 *studied.*

9       (b) *CONTENTS.*—*The studies under this section shall—*

10           (1) *determine the status and location of mar-*  
11 *ginal wells and gas reservoirs;*

12           (2) *gather the production information of these*  
13 *marginal wells and reservoirs;*

14           (3) *estimate the remaining producible reserves*  
15 *based on variable pipeline pressures;*

16           (4) *locate low-pressure gathering facilities and*  
17 *pipelines;*

18           (5) *recommend incentives which will enable the*  
19 *continued production of these resources;*

20           (6) *produce maps and literature to disseminate*  
21 *to States to promote conservation of natural gas re-*  
22 *serves; and*

23           (7) *evaluate the amount of natural gas that is*  
24 *being wasted through the practice of venting or flar-*  
25 *ing of natural gas produced in association with crude*  
26 *oil well production.*

1       (c) *DATA ANALYSIS.*—*Data development and analysis*  
2 *under this section shall be performed by an institution of*  
3 *higher education with GIS capabilities. If the organization*  
4 *receiving the grant under subsection (a) does not have GIS*  
5 *capabilities, such organization shall contract with one or*  
6 *more entities with—*

7           (1) *technological capabilities and resources to*  
8 *perform advanced image processing, GIS program-*  
9 *ming, and data analysis; and*

10          (2) *the ability to—*

11           (A) *process remotely sensed imagery with*  
12 *high spatial resolution;*

13           (B) *deploy global positioning systems;*

14           (C) *process and synthesize existing, vari-*  
15 *able-format gas well, pipeline, gathering facility,*  
16 *and reservoir data;*

17           (D) *create and query GIS databases with*  
18 *infrastructure location and attribute informa-*  
19 *tion;*

20           (E) *write computer programs to customize*  
21 *relevant GIS software;*

22           (F) *generate maps, charts, and graphs*  
23 *which summarize findings from data research for*  
24 *presentation to different audiences; and*

1                   (G) deliver data in a variety of formats, in-  
2                   cluding Internet Map Server for query and dis-  
3                   play, desktop computer display, and access  
4                   through handheld personal digital assistants.

5           (d) *AUTHORIZATION OF APPROPRIATIONS.*—There are  
6           authorized to be appropriated to the Secretary of Energy  
7           for carrying out this section—

8                   (1) \$1,500,000 for fiscal year 2006; and

9                   (2) \$450,000 for each of the fiscal years 2007  
10           through 2010.

11           (e) *DEFINITIONS.*—For purposes of this section, the  
12           term “GIS” means geographic information systems tech-  
13           nology that facilitates the organization and management of  
14           data with a geographic component.





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**H. R. 1640**

[Report No. 109-215, Part I]

**A BILL**

To ensure jobs for our future with secure and reliable energy.

JULY 29, 2005

Reported from the Committee on Energy and Commerce  
with an amendment

JULY 29, 2005

Committees on Science, Resources, Education and the  
Workforce, Transportation and Infrastructure, Finan-  
cial Services, and Agriculture discharged; committed to  
the Committee of the Whole House on the State of the  
Union and ordered to be printed